Supreme Court, U.S.
FILED
OCT 19 1992
OFFICE OF THE CLERK

92-844

No. 92-____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

OWENS-CORNING FIBERGLAS CORPORATION,

Petitioner,

—v.—

LEONARD ADAMS, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is the Due Process Clause of the Fourteenth Amendment, as interpreted in Pacific Mut. Life Ins. Co. v. Haslip, 111 S. Ct. 1032 (1991), and Garnes v. Fleming Landfill, Inc., 186 W. Va. 656, 413 S.E.2d 897 (1991), violated where (i) jury instructions on punitive damages failed to constrain the jury's discretion; (ii) the trial courts refusal to meaningfully and adequately review the 36 awards of punitive damages returned by two separate juries based on the same evidence and to explain on the record its refusal to reduce or reverse those awards; and (iii) all appellate review was subsequently denied?

2. Does due process permit repetitive or unrestricted awards of punitive damages for the same course of

conduct in the absence of any mechanism for ensuring that the total punitive damages do not exceed the amount necessary for deterrence and punishment?

LIST OF PARTIES AND RULE 29.1 STATEMENT

The first group of respondents, who were plaintiffs in the trial before the Honorable Larry V. Starcher, are:

Leonard and Lucille Adams
Garlen and Ann Burton
George and Barbara Campbell
Leslie and Ruth Carr
John Chapman
Arville and Ethell Dalton
James and Patricia Darrah
Paul Dunn
Terry Lee England
William Gabbert
George and Alice Hoschar
Everett and Mary Johnson
James and Lois Kirk
William and Hilda Kittle
Foster Lipscomb
Nelson and Wilda Lott
George and Evelyn Mehalic
Jeryl and Dorothy Root
Stanley and Linda Rowe
Joseph and Sandra Sberna
Joseph and Myrtle Shilot.

The remainder of respondents, who were plaintiffs in the trial before the Honorable Robert B. Stone, are:

Charles and Margaret Barnes
Allen and Mary Ann Campbell

Gary and Pamela Fitzsimmons
George and Dora Frazier
Terrance and Blanche Harrah
William and Molly Heaberlin
William Hunt
Frank and Reva Mae Mano
Gary McCormick
Perry Moore
Larry Neidert
Anthony and Frances Scotka
Benjamin and Janice Sisler
Robert and Gloria Thorne
Arthur and Betty Timberlake.

In addition, Judge Stone directed verdicts against the following plaintiffs:

Thomas and Ruby Gardner
Dickie and Betty Ann Hughes
James and Ilse Thomas.

These plaintiffs have not appealed from this judgment and are not respondents to this petition.

Petitioner Owens-Corning Fiberglas Corporation and Keene Corporation were defendants in the trial below. Keene has filed a separate petition for a writ of certiorari, No. 92-359; Keene's petition was consolidated by this Court with the

petition for a writ of certiorari in Owens-Illinois, Inc. v. Bolyard, No. 92-360, a petition on similar issues arising out of the Circuit Court of Monongalia County, West Virginia. Other defendants, who either settled before judgment, were dismissed, or whose cases were stayed by reason of bankruptcy filings, are:

Armstrong World Industries
Charles Withrow Enterprises, Inc.
Celotex Corporation
Eagle Picher Industries, Inc.
GAF Corporation
Garlock Industries
H.K. Porter Company
National Gypsum Company
Nicolet Inc.
Nitro Industrial Coverings Inc.
Ohio Valley Insulating Company, Inc.
Owens-Illinois, Inc.
Pittsburgh Corning Corporation
Raymark Industries, Inc.
United States Gypsum Company
Tasco Insulations Inc.

These defendants were not parties to the petition for appeal filed by OCF in the West Virginia Supreme Court of Appeals and are not respondents to this petition.

Pursuant to Rule 29.1 of the Rules of this Court, Owens-Corning Fiberglas Corporation states that it is a publicly-held corporation, has no parent company and has no affiliates other than wholly-owned subsidiaries.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Owens-Corning Fiberglas Corporation (hereinafter "OCF") respect-

fully petitions for a writ of certiorari to the Circuit Court of Monongalia County, West Virginia, to review its decision on March 11, 1991 in this case. The West Virginia Supreme Court of Appeals denied OCF's petition for appeal on February 5, 1992, and denied OCF's notice of renewal of petition to allow appeal on July 21, 1992.

OPINIONS BELOW

The unreported Orders of the Circuit Court of Monongalia County, West Virginia, denying OCF's motions for judgment notwithstanding the verdict, for remittitur, or, in the alternative, for a new trial, appear in the Appendix at pages A-1 to A-205. The unreported Order of the West Virginia Supreme Court of Appeals denying OCF's petition for appeal appears in the Appendix at pages A-206 to

A-209. The unreported Order of the West Virginia Supreme Court of Appeals denying OCF's notice of renewal of petition to allow appeal appears in the Appendix at pages A-210 to A-211. No opinions were filed with any of these Orders.

JURISDICTION

The West Virginia Supreme Court of Appeals entered its Order denying OCF's notice of renewal of petition to allow appeal on July 21, 1992. This Court has jurisdiction under 28 U.S.C. § 1257(a) (1988).

CONSTITUTIONAL PROVISION INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides: "No State shall . . . deprive any person of life,

liberty, or property, without due process of law."

STATEMENT OF THE CASE

Beginning in 1953, OCF distributed Kaylo, a rigid, high-temperature insulation product that contained approximately 15 percent asbestos. In 1958, OCF purchased the Kaylo division from Owens-Illinois, Inc., and began to manufacture the product. In 1972, OCF ceased all production of asbestos-containing Kaylo, replacing the asbestos reinforcement with a combination of specially treated glass fibers and various types of cellulose.

Twenty years later, OCF has been named as a defendant in 160,000 lawsuits in which plaintiffs allege personal injury resulting from exposure to Kaylo. As of December 31, 1991, OCF has resolved 74,000 of these cases, almost all through

settlement, and has settled another 17,000 cases in principle. Nevertheless, more than 85,000 cases remain pending, and OCF has received more then 20,000 new cases in each of the last five years.

The 36 cases that are the subject of this petition were tried in the Circuit Court of Monongalia County, West Virginia, in late 1990. The court consolidated 39 separate cases into two groups for trial: one group was tried before Judge Larry V. Starcher (the Adams group); the second was tried before Judge Robert B. Stone (the Barnes group). The two trials were held in separate courtrooms with one exception: both judges and both juries sat together to hear evidence relevant to product defect and plaintiffs' claims for punitive damages. Thus, with respect to punitive damages, the Adams and Barnes juries literally

heard the identical evidence presented at the same time and in the same manner by the same witnesses.

The juries also received the identical charge on punitive damages:

> The Court instructs the jury that in addition to compensatory damages, which if awarded are awarded against a defendant to compensate a plaintiff for his injury, the law permits the jury under certain circumstances to award an injured plaintiff punitive damages against such defendant in order to punish such defendant or to deter others.
>
> The Court instructs the jury that under West Virginia law a defendant may be held liable for punitive damages in actions of tort such as this if the evidence reveals that a defendant in an action where punitive damages are sought was guilty of gross fraud, malice, oppression, or wanton, willful or reckless misconduct or criminal indifference to civil obligations affecting the rights of others: Therefore, you are instructed that if you believe that either defendant corporation was guilty of gross fraud, malice, oppression, or wanton,

> willful or reckless misconduct or criminal indifference to its civil obligations, then you may award punitive damages against said defendant.
>
> The Court instructs the jury that punitive damages are awarded to punish a defendant and to deter others from pursuing a like course of conduct. The amount of punitive damages awarded, when considered together with compensatory damages, should be in such amount as the jury believes is sufficient to deter others from engaging in a like course of conduct.
>
> The Court instructs the jury that the fact that instructions have been given to you on the subject of damages should not be perceived by you as an intimation on the part of the Court that the defendant is or is not liable for the injuries and damages alleged. Such liability is to be determined solely by your own findings and from the evidence and the law as incorporated in these instructions.

Barnes Jury Charge at 17-18; Adams Jury Charge at 15-16.

On November 13, 1990, the Adams jury returned verdicts in favor of 21 plain-

tiffs (plus their wives, where they were also parties) for a total of $1,217,040 in compensatory damages, with individual compensatory verdicts ranging from $15,000 to $299,200. Liability was allocated 35 percent to OCF, 15 percent to Keene and 50 percent to settled defendants. In addition, in each of the 21 cases, the jury awarded punitive damages of $30,000 against OCF for a total of $630,000, and of $5,000 against Keene for a total of $105,000.

On the same date, the Barnes jury returned verdicts in favor of 15 plaintiffs (plus their wives) totalling $629,000 in compensatory damages, with individual compensatory verdicts ranging from $22,000 to $70,000. (The court had earlier granted defendants' motion for directed verdicts against three other plaintiffs and their wives.) The jury in

Barnes found OCF liable for percentages ranging from 2 to 27 percent; Keene was found liable in 9 of the 15 cases, with its liability apportioned at between 1 and 7 percent. In addition, the Barnes jury awarded $250,000 in punitive damages against OCF for each plaintiff, for a total of $3,750,000. The jury did not award punitive damages against Keene.

OCF preserved its objections to the propriety and constitutionality of punitive damages at the trial of the Adams group (which occurred in November 1990, before this Court's decision in Pacific Mut. Life Ins. Co. v. Haslip, 111 S. Ct. 1032 (1991)). Keene moved for a directed verdict on punitive damages, stating:

> MR. HENDRICKSON: Your Honor, at this time, too, I would move for a directed verdict on behalf of my client, Keene Corporation, on the issue of punitive damages. I am not going to go into all the constitu-

> tional basis because you have heard those arguments before, and I assume that your rulings on the constitutional basis will remain the same as they were in the past.
>
> THE COURT: Law is still the same. We think some day it may change, but as of today it is still the same.
>
> MR. HENDRICKSON: I am not going to waste your time, and they would be incorporated into the record.

Adams trial transcript, November 2, 1990, Vol. XII, p. 2815. The trial court denied the motion with respect to both[1] Keene and OCF:

> THE COURT: I make this ruling with respect to the motion that may be made by any other defendants on the same issue of punitive damages. . . . I think there is enough evidence to

---

[1] A Master Procedural Order that controlled the trial of these cases provided that motions made by one defendant "shall be treated as having been made for the benefit of all defendants and additional defendants so that the record need not be burdened by legal papers from other parties joining in the matters presented." Master Procedural Order, Revision #2, issued May 31, 1988, Section III, B.

> overrule your motion. I am leaving punitive damages in.

Adams trial transcript, November 2, 1990, Vol. XII, pp. 2820-21. In doing so, the court did not even address the constitutional arguments put forward by defendants; rather, it referred only to the evidence of defendants' conduct relevant to the issue of punitive damages. Id. Later, at the close of evidence, Keene and OCF renewed their motions:

> MR. HENDRICKSON: First, I would renew on behalf of Keene Corporation their motion for a directed verdict on punitive damages on issues of product identification and issues of medicine and all other motions made at the end of the plaintiffs' case I would make this motion.
>
> MR. RILEY: Same motion for OCF.
>
> THE COURT: The Court denies it on the grounds heretofore stated on the record.

Adams trial transcript, November 8, 1990, p. 7.

OCF and Keene made similar motions for directed verdicts on punitive damages at the close of plaintiffs' case in Barnes. The court denied these motions, also without addressing defendants' constitutional concerns:

> THE COURT: Rulings in the past have been very consistent and I'm going to be consistent and that is we have allowed punitive damages to go to the jury in these cases. . . . We are now at the plaintiffs best case and not the defendants best case.

Barnes trial transcript, October 30, 1990, p. 104. As in Adams, the trial court's stated reasons for denying defendants' motions focused solely on the evidence relating to defendants' conduct. Id.

After the verdicts, OCF submitted timely motions for judgment notwithstand-

ing the verdict, remittitur, or, in the alternative, new trial. In its motions, OCF argued that the awards of punitive damages against OCF were in violation of the Due Process Clause and were excessive. OCF informed the courts that it had been subjected to previous awards of punitive damages, including two in West Virginia totalling more than $4 million, and explicitly argued that the jury instructions did not give the juries "detailed guidance as to the amount of any punitive damage award."

On March 11 and 12, 1991, the trial courts summarily and without opinion denied OCF's motions. Appendix pages A-1 to A-205. OCF thereafter filed a timely petition for appeal with the West Virginia Supreme Court of Appeals. (There is no intermediate appellate court in West Virginia, and appeal to the

Supreme Court of Appeals is in the discretion of that court. W. Va. Code § 58-5-1 et seq.)

In its petition for appeal, extensively citing this Court's recent decision in Haslip, OCF argued: "[B]ecause the courts below did not apply the safeguards required by due process, the punitive awards in these cases must be reversed." OCF asserted that the absence of these safeguards -- especially given that "West Virginia provides no assurance that an appellate court will review the outcome of a trial" -- deprived OCF of due process. OCF further argued that the court must consider as mitigation of punitive damages evidence that OCF has sustained a loss and has suffered numerous "other civil awards against [it] for the same conduct."

Approximately one month after OCF filed its petition, the West Virginia Supreme Court of Appeals revolutionized that state's law of punitive damages. Adopting in large part the procedures approved in Haslip, the Supreme Court of Appeals held: "Upon petition this Court will review all punitive damage awards." Garnes v. Fleming Landfill, Inc., 186 W. Va. 656, 413 S.E.2d 897, 900 (1991) (on remand from this Court, 111 S. Ct. 2882 (1991)). OCF thereafter filed an application for leave to file a supplement to its petition for appeal to address the effect of Garnes on these cases.

The court never ruled on this application. Instead, only one day after OCF received five minutes to argue its petition for appeal, the Supreme Court of Appeals denied OCF's petition without opinion. Appendix pages A-206 to A-209.

OCF thereafter filed a timely notice of renewal of petition to allow appeal, asserting that the court's rejection of OCF's petition for appeal

> constituted a denial of due process on the issue of punitive damages against it. This action by the Court failed to provide the due process protections and requirements set forth [in] . . . Haslip. . . . Furthermore, the Court's action failed to follow its own guidelines concerning punitive damages, as set forth in . . . Garnes.

On July 21, 1992, the Supreme Court of Appeals summarily denied OCF's petition, again without opinion. Appendix pages A-210 to A-211.

Despite OCF's repeated challenges to the availability of punitive damages in these cases, and despite its numerous attempts to receive post-verdict and appellate review of these punitive damage awards, the West Virginia courts have

summarily and without the slightest explanation refused to consider or address OCF's numerous arguments that these awards of punitive damages violate due process. It is this constitutional deficiency that prompts this petition.

REASONS FOR GRANTING THE WRIT

This petition provides this Court with the opportunity to address issues left unresolved in Pacific Mut. Life Ins. Co. v. Haslip, 111 S. Ct. 1032 (1991). Significantly, it does so in the context of the asbestos personal injury litigation, which the Judicial Panel on Multidistrict Litigation has characterized as having "reached a magnitude . . . that threatens the administration of justice." In re Asbestos Prods. Liab. Litig. (No. VI), 771 F. Supp. 415, 418 (J.P.M.L. 1991).

In Haslip, noting "once again [its] concern about punitive damages that run wild," this Court reiterated that due process imposes limits on punitive damages: "unlimited jury discretion -- or unlimited judicial discretion for that matter -- in the fixing of punitive damages may invite extreme results that jar one's constitutional sensibilities." Id. at 1043.

Haslip was an appeal from a punitive damage award returned in Alabama. Alabama at that time followed certain procedures designed to ensure, as this Court has said, that any award of punitive damages was narrowly tailored to achieve "appropriate deterrence and retribution" and was not "greater than reasonably necessary to punish and deter." Haslip, 111 S. Ct. at 1044-45.

First, Alabama trial courts were required to limit a jury's discretion by way of careful instructions that keeps the jury "confined to deterrence and retribution, the state policy concerns sought to be advanced." Id. at 1044. Second, the trial court must conduct a post-verdict hearing to consider the propriety of a punitive damages verdict with reference to a variety of case-specific factors whose aim is to guarantee that the award was not excessive, and must "reflect in the record the reasons for interfering with a jury verdict or refusing to do so, on grounds of excessiveness of the damages."[2] Id. at 1044 (citation omitted). Third, the

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[2] Among the factors that the trial court should address are the "culpability of the defendant's conduct," the "desirability of discouraging others from similar conduct," the "impact upon the parties,", and "other factors, such as the impact on innocent third parties". Haslip, 111 S. Ct. at 1044 (citation omitted).

state supreme court must apply a series of "detailed substantive standards" in reviewing the punitive damage award to further guarantee that it was not excessive.[3] Id. at 1045.

This Court held that Alabama's procedures were sufficient to avert a violation of due process in that case. Alabama's two levels of post-verdict re-

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[3] Those standards are:

> (a) whether there is a reasonable relationship between the punitive damages award and the harm likely to result from the defendant's conduct as well as the harm that actually has occurred; (b) the degree of reprehensibility of the defendant's conduct, the duration of that conduct, the defendant's awareness, any concealment, and the existence and frequency of similar past conduct; (c) the profitability to the defendant of the wrongful conduct and the desirability of removing that profit and of having the defendant also sustain a loss; (d) the "financial position" of the defendant; (e) all the costs of litigation; (f) the imposition of criminal sanctions on the defendant for its conduct, these to be taken in mitigation; and (g) the existence of other civil awards against the defendant for the same conduct, these also to be taken in mitigation.

Haslip, 111 S. Ct. at 1045.

view were critical to that conclusion: it ensured "meaningful and adequate review by the trial court whenever a jury has fixed the punitive damages"; after further review by the state supreme court, it ensured "that the award does not exceed an amount that will accomplish society's goals of punishment and deterrence . . . [and] that the punitive damages are reasonable in their amount and rational in light of their purpose." Id. at 1044-45 (citation omitted).

Haslip thus approved the procedures used in Alabama because those procedures provided substantive limitations on the availability and amount of punitive damages. By contrast, the West Virginia law in place at the time of the trial of these cases provided neither those procedural protections nor the substantive limitations.

The West Virginia Supreme Court of Appeals subsequently acknowledged in Garnes v. Fleming Landfill, Inc., 186 W. Va. 656, 413 S.E.2d 897 (1991), that West Virginia punitive damages law, as it existed in November 1990, was constitutionally deficient. This Court had vacated a dozen punitive damage awards and remanded the cases for reconsideration in light of Haslip. Among those remanded was Fleming Landfill, Inc. v. Garnes, 111 S. Ct. 2882 (1991), a case from the West Virginia Supreme Court of Appeals.

The Supreme Court of Appeals issued its decision after the remand on December 5, 1991, more than one month after OCF had filed its petition to appeal in Adams and Barnes. Calling Haslip a "major step in the unification of America's decisional law in matters where

the separate states are unable to craft a set of rational rules," 413 S.E.2d at 905, the court concluded that due process affirmatively requires three levels of protection in connection with punitive damages:

- reasonable constraint on the jury's discretion;
- meaningful and adequate review of the award by the trial court using established procedures; and
- meaningful and adequate review by the appellate court.

Id. at 907-908.

Garnes represented a fundamental change in punitive damage law in West Virginia. The Supreme Court of Appeals explicitly overruled its own long-standing precedent, which had allowed punitive damages even if no compensatory damages were awarded, and which required no reasonable relationship between punitive and

compensatory damages. See Wells v. Smith, 171 W. Va. 97, 297 S.E.2d 872 (1982). The court also held that West Virginia's previous scheme for the award of punitive damages -- which was in effect at the time of the trials in Adams and Barnes -- violated due process. Nevertheless, even though the Adams and Barnes juries were not constrained by careful jury instructions, and the trial courts did not meaningfully review these punitive damages awards, the Supreme Court of Appeals two months later denied OCF's petition for appeal without explanation. OCF has thus been deprived of all three of the levels of procedural safeguards approved in Haslip and required by Garnes, and of the substantive limits on punitive damages required by due process.

A. The Jury Instructions Did Not Sufficiently Limit the Jury's Discretion.

To ensure that a jury's discretion is reasonably constrained, Garnes required new, detailed jury instructions concerning punitive damages:

> When the trial court instructs the jury, the court should carefully explain the factors to be considered in awarding punitive damages. . . .
>
> (1) Punitive damages should bear a reasonable relationship to the harm that is likely to occur from the defendant's conduct as well as to the harm that actually has occurred. If the defendant's actions caused or would likely cause in a similar situation only slight harm, the damages should be relatively small. If the harm is grievous, the damages should be much greater. (2) The jury may consider (although the court need not specifically instruct on each element if doing so would be unfairly prejudicial to the defendant), the reprehensibility of the defendant's conduct. The jury should take into account how long the defendant continued in his actions, whether he was aware his actions were causing

> or were likely to cause harm, whether he attempted to conceal or cover up his actions or the harm caused by them, whether/ how often it made reasonable efforts to make amends by offering a fair and prompt settlement for the actual harm caused once his liability became clear to him. (3) If the defendant profited from his wrongful conduct, the punitive damages should remove the profit and should be in excess of the profit, so that the award discourages future bad acts by the defendant. (4) As a matter of fundamental fairness, punitive damages should bear a reasonable relationship to compensatory damages. (5) The financial position of the defendant is relevant.

413 S.E.2d at 908-09.

The jury instructions in Adams and Barnes failed to enlighten the juries as to the nature and purpose of punitive damages, and did not limit the juries' discretion in setting the amount of punitive damages. Haslip, 111 S. Ct. at

1044.[4] The instructions did not discuss any of these five factors, and were no more illuminating than those found deficient by the Supreme Court of Appeals in Garnes.

After its first refusal to accept OCF's appeal in these cases, the Supreme Court decided Davis v. Celotex Corp., 420 S.E.2d 557 (W. Va. 1992), another asbestos personal injury case tried in the Circuit Court of Monongalia County. As with Adams and Barnes, Davis was tried before Haslip and Garnes were decided.

Celotex had argued that its due process rights were violated "solely" because "the trial court's instruction

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[4] Prior to the holding in Haslip and Garnes, evidence concerning these factors would have had little of the force that it now has, whereas the potential for prejudice was great. Indeed, as the Supreme Court of Appeals recognized, certain of this evidence is so inherently inflammatory that it ought never be presented to a jury. Garnes, 413 S.E.2d at 909-10.

did not contain all of the" Garnes factors. 420 S.E.2d at __, 1992 WL 130567 at *10. In response to this limited argument, the Supreme Court of Appeals held:

> in cases tried before Garnes in which punitive damages were awarded, we will not set aside such awards if there is a factual basis for the punitive damages, if the punitive damages bear a reasonable relationship to the compensatory damages, and if the parties' main assignment of error is that the trial court's instruction did not contain all of the factors enumerated in Garnes.

Id.

Davis was wrongly decided. As Haslip made clear, due process requires procedures to ensure that any punitive damages awarded be narrowly tailored to serve the goals of punishment and deterrence. Due process also requires consideration of certain mitigating factors, particularly in litigation of this

magnitude. The absence of these protections in West Virginia is precisely why the court in Garnes found its previous system for awarding punitive damages unconstitutional. It was incorrect, therefore, for the Supreme Court of Appeals to refuse to review, as it did in Davis, awards of punitive damages in cases tried before Garnes entered under an admittedly unconstitutional scheme.

In any event, Davis is inapplicable here. OCF's due process challenge is not that the jury instructions did not contain all of the Garnes factors, but that they did not contain any of these factors. Nor is this OCF's "sole[]" challenge; other due process deficiencies that OCF raised include:

- the trial court failed to meaningfully review the punitive damage awards;

- OCF was denied all appellate review of these awards;
- the awards of punitive damages were excessive and not limited to only that amount necessary for appropriate punishment and deterrence; and
- the jury was given unbridled discretion in the determination of the amount of punitive damages.

That these juries "ran wild" is evidenced by the wide disparity in the amount of punitive damages awarded by the two separate juries, even though the two juries sat together to hear all of the evidence relevant to punitive damages and received identical jury instructions. Nevertheless, the jury in Barnes awarded $3,750,000 in punitive damages, six times the $630,000 awarded in Adams.

The "lottery" aspect of the awards in these cases is further emphasized by analysis of the alleged harm to the plaintiffs in these cases. Adams, in

which the jury returned a smaller award of punitive damages, involved a larger number of plaintiffs than in Barnes, and plaintiffs who were more seriously injured (two plaintiffs in the Adams group alleged asbestos-related cancers; none of the Barnes plaintiffs made such a claim).

Similarly unrelated to the relative punitive damage awards was OCF's "percentage of liability." In Adams, OCF was found to be 35 percent liable in each case. In Barnes, the liability assessed against OCF ranged from 2 to 27 percent, with an average percentage of liability of less than 12 percent. Thus, OCF's average share of liability was three times greater for the Adams plaintiffs, whereas the punitive damages in that case were only a sixth of the punitive damages returned in Barnes.

For all these reasons, the unconstrained discretion given to the juries violated OCF's right to due process.

B. The Trial Courts' Perfunctory Review of These Punitive Damage Awards, Without Opinion, Violated Due Process.

At the time of trial, West Virginia courts could only disturb awards of punitive damages if they were "monstrous, enormous, beyond all measure, unreasonable, outrageous and manifestly show jury passion, impartiality, prejudice or corruption." Garnes, 413 S.E.2d at 908. This standard of review, the West Virginia Supreme Court subsequently held, "provide[s] insufficient review by the trial court of punitive damages awards." Id. The West Virginia standards of review applicable at the time were also indistinguishable from the Vermont and Mississippi procedures for review of pu-

nitive damages criticized in Haslip. 111 S. Ct. at 1045 n.10.

Replacing this unconstitutional standard of review of awards of punitive damages, the West Virginia Supreme Court of Appeals required trial courts to "consider the factors explained to the jury as well as the following other factors":

> (1) The costs of litigation. (We want to encourage plaintiffs to bring wrongdoers to trial.); (2) Any criminal sanctions imposed on the defendant for his conduct. (Any sanctions should mitigate the punitive damages award.); (3) Any other civil actions against the same defendant, based on the same conduct. (Any other awards should mitigate the punitive damages award.); and (4) The appropriateness of punitive damages to encourage fair and reasonable settlements when a clear wrong has been committed. A factor that may justify punitive damages is the cost of litigation to the plaintiff.

413 S.E.2d at 909. Moreover, as in Haslip, the Supreme Court of Appeals re-

quired the trial court to explain its reasoning on the record: "When reviewing the punitive damages award, a West Virginia trial court should thoroughly set out the reasons for changing (or not changing) the award." Id. at 910.

In Adams and Barnes, the trial courts failed to address any of the specific arguments raised by OCF related to punitive damages (or any of the other issues raised by OCF's post-trial motion). Despite the fact that Haslip was already decided at the time of the arguments on OCF's post-trial motions, the courts summarily held in all 36 cases:

> The Court having maturely considered the [parties' arguments], does hereby HOLD and ORDER that all motions for judgment notwithstanding the verdict and for new trials are hereby denied.

Appendix pages A-1 to A-201. This cursory announcement of denial hardly qualifies as the type of meaningful and adequate review required by due process. Haslip, 111 S. Ct. at 1044; Garnes, 413 S.E.2d at 909.

C. OCF Received No Appellate Review.

The final safeguard ensuring that punitive damages comport with due process is appellate review. Haslip, 111 S. Ct. at 1045. This requirement posed special problems for West Virginia, which has no intermediate appellate courts, and in which appeals to the Supreme Court of Appeals are discretionary.

The court in Garnes resolved this problem by affirmatively declaring: "Upon petition, this court will review all punitive damages awards. In our review of the petition, we will consider

the same factors that we require the jury and trial judge to consider." 413 S.E.2d at 900, Syllabus Point 5 (emphasis added).

Two weeks later, the Supreme Court of Appeals clarified its holding in Garnes, noting that it would not accept an appeal if the alleged error was not preserved below or not properly raised in the petition for appeal. Pote v. Jarrell, 186 W. Va. 369, 412 S.E.2d 770, 777 (1991). Because, in that case, "no specific objection based on the criteria in Haslip was raised below nor was the punitive damage issue argued in the briefs before us on appeal," the court refused to review the punitive damages award. Id.

Later still, but before the court's final refusal of OCF's appeal, the Supreme Court of Appeals reaffirmed its

commitment to Garnes: "We will . . . be especially diligent in our review of any punitive damages awards entered before Garnes was decided." TXO Prod. Corp. v. Alliance Resources Corp., 419 S.E.2d 870, 886 (1992).

OCF's petition for appeal was filed after Haslip but before Garnes. The petition addressed some of the factors made relevant by Haslip (and later by Garnes), including the following:

- As of July 1991, OCF had already resolved more than 67,000 personal injury and wrongful death cases, all of which arose from the same course of conduct, at a cost of hundreds of millions of dollars. Petition for Appeal at 51, 60-61.

- 87,000 cases were pending against OCF as of July 1991. More than 20,000 new cases were filed against the company in each of the last five years. Petition for Appeal at 61.

- In 1990 alone, OCF resolved over 12,000 cases at a cost of

more than $117 million, exclusive of defense costs. Petition for Appeal at 60.

- In most cases that went to verdict against OCF, either the trial court or the jury rejected claims for punitive damages. Petition for Appeal at 51-52.

- 12 juries had already awarded almost $22 million in punitive damages against OCF, including two other West Virginia juries that awarded more than $4 million. Petition for Appeal at 52.

- At least a dozen former manufacturers or distributors of asbestos-containing products, representing over half the historic liability in the asbestos litigation, had declared bankruptcy. Petition for Appeal at 61.[5]

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[5] The following updates the data provided in the Petition for Appeal: As reported in its 1991 Annual Report, OCF had resolved 74,000 cases by the end of 1991, with another 17,000 settled in principle. 85,000 cases were then pending, and new cases continued to be received at a rate of 20,000 per year.

During 1991, OCF resolved 15,500 claims at a total indemnity cost of $145 million. OCF's unexhausted products liability coverage, which was $1.13 billion as of December 31, 1991, was committed to pending claims and would likely be depleted by 1996 or 1997. OCF had already paid

After the Supreme Court of Appeals decided Garnes, OCF sought leave to supplement its petition for appeal to discuss how Garnes, in conjunction with the factors already discussed in its petition, affected the Adams and Barnes cases. The Supreme Court of Appeals never ruled on this application.

OCF's only opportunity to address Garnes, and to directly argue the six points raised in its petition, was at the

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and/or set aside $175 million for uninsured costs of past and pending claims, and in 1991, OCF took an $800 million charge against earnings to cover the estimated uninsured costs of claims to be received from 1992 through 1999.

To date, 14 other awards of punitive damages have been returned against OCF, totalling over $29.5 million. This amount does not include $24 million of a $25 million punitive damage that was remitted by the trial court to $2 million and by the Court of Appeals to $1 million. Dunn v. Owens-Corning Fiberglas Corp., 774 F. Supp. 929 (D.V.I. 1991), vacated in part sub nom., Hess Oil Virgin Islands Corp. v. HOVIC, 1992 WL 228875 (3d Cir. Sept. 18, 1992). The Third Circuit recently vacated the panel's decision and granted OCF's motion for rehearing in banc. 1992 WL 274786 (3d Cir. Oct. 8, 1992).

summary proceeding provided upon petition for appeal. As petitioner, OCF was allocated five minutes for argument; respondents, as is the practice, were not given any opportunity to argue.

The day after the truncated argument, and despite its unambiguous holding in Garnes, the Supreme Court of Appeals summarily and without opinion denied OCF's petition for appeal.[6] Significantly, the court did not state that it had considered OCF's arguments on the merits and was affirming the Circuit

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[6] The demands of due process require that the reasons for a decision be explained in certain circumstances. Harris v. Rivera, 454 U.S. 339, 344 (1981). See also Morrissey v. Brewer, 408 U.S. 471, 489 (1972) and Wolff v. McDonnell, 418 U.S. 539, 564-565 (1974). Based on Haslip and Garnes, this appears to be one of the exceptional instances in which a court must articulate its reasons for its actions.

Court's Orders; instead, it refused to hear OCF's appeal.[7]

The Supreme Court of Appeals' refusal to grant OCF's petition for appeal was surprising in light of Pote and TXO Prod. Corp. In contrast to the petitioner in Pote, OCF repeatedly preserved its challenge to punitive damages both during and after the trial. Moreover, OCF discussed at length its objections to the punitive damages awards in its petition for appeal, expending 33 pages on this one issue. There is thus no way that the Supreme Court of Appeals could have concluded, especially pursuant to "diligent" review, that OCF failed to

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[7] The jurisdiction of the Supreme Court of Appeals is discretionary. W. Va. Code § 58-5-1 et seq. This limitation on the right to appeal is not the result of oversight of either the West Virginia Constitution or its legislature. Rather, the lack of an intermediate appeals court shows a deliberate purpose to set limits upon litigation after one trial in a court having jurisdiction. Fleshman v. McWhorter, 54 W. Va. 161, 46 S.E. 116, 117 (1903).

preserve the error or failed to raise the issue before that court.

This complete denial of any appellate review, especially when compounded with the plainly inadequate review by the Circuit Court, was a denial of due process and a violation of the mandate of this Court. Haslip, 111 S. Ct. at 1045. As this Court explained, the role of appellate review of punitive damage awards is critical to the determination of whether due process was violated:

> Th[e] appellate review makes certain that the punitive damages are reasonable in their amount and rational in light of their purpose to punish what has occurred and to deter its repetition. . . .
>
> The Alabama Supreme Court's post-verdict review ensures that punitive damages awards are not grossly out of proportion to the severity of the offense and have some understandable relationship to compensatory damages. . . .

> These standards have real effect when applied by the Alabama Supreme Court to jury awards. . . . [P]ost-verdict review by the Alabama Supreme Court has resulted in reduction of punitive awards. The standards provide for a rational relationship in determining whether a particular award is greater than reasonably necessary to punish and deter.

Id. at 1045-46 (citation omitted). Receiving "the benefit of appropriate review by the [state] Supreme Court," id. at 1046, must mean more than a one-line denial of a petition for appeal and speculation by the losing petitioner as to whether or not the reviewing court performed the constitutionally-required analysis. If Garnes sanctions the type of disposition accorded to OCF's petition for appeal, then the Garnes appellate review component remains fatally flawed under Haslip.

D. The Absence of Any Mechanism To Review the Aggregate of Unrestricted Awards of Punitive Damages Violates Due Process.

To comport with due process, punitive damages must be imposed in a rational manner and may not be "greater than reasonably necessary to punish and deter." Haslip, 111 F. Ct. at 1045. That requirement applies not only to the punitive damages imposed by a single jury, but also, indeed especially, to the aggregate of the punitive damages imposed for a single course of conduct. Id.

For the reasons more fully explained in the petition for a writ of certiorari in Owens-Illinois, Inc. v. Bolyard, No. 92-360, which this Court has consolidated with Keene's petition for a writ of certiorari in this case, No. 92-359, unlimited awards of punitive damages imposed against a defendant for a

single course of conduct violate due process and West Virginia provides no rational mechanism for ensuring that the total amount of punitive damages imposed against a defendant for such conduct is within the maximum amount allowable by due process. Accordingly, OCF adopts and joins the argument on this issue set forth at pages 10-12 of Owens-Illinois' petition.

In this case, OCF informed the Supreme Court of Appeals that 12 juries had returned punitive damages verdicts against OCF for a total amount of almost $22 million,[8] based on the single course of conduct of its manufacture and sale of Kaylo. Among those verdicts were two returned by West Virginia juries for a

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[8] Since then, 4 additional juries have awarded punitive damages against OCF, bringing the total to more than $34 million (not including $24 million of the $25 million awarded in Dunn).

total of more than $4 million in punitive damages. Petition for Appeal at 52. Because West Virginia provides no mechanism for ensuring that the aggregate of different juries' awards does not exceed the total amount allowable by due process, the awards in these cases cannot stand.

CONCLUSION

Owens-Corning Fiberglas Corporation was assessed over $4 million in punitive damages in these cases by two separate juries. These awards, returned before this Court's decision in Haslip and the West Virginia Supreme Court of Appeals' decision in Garnes, were governed under a set of legal procedures that the Supreme Court of Appeals candidly found to be constitutionally deficient under Haslip.

These punitive damage awards were returned by a jury that was not adequately instructed, were reviewed by a trial court that did not consider the Garnes factors and explain its reasoning on the record, and were not reviewed by West Virginia's only appellate court. This unbridled jury discretion and complete lack of review violates due process, as

does the absence of a rational decisionmaking process to ensure that unrestricted or successive awards of punitive damages are not excessive.

For the foregoing reasons, this Court should grant the writ and reverse

the judgment, or in the alternative, vacate the awards of punitive damages and remand for reconsideration in light of Haslip.

Respectfully submitted,

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Dated: October 19, 1992

APPENDIX

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-764

LEONARD ADAMS

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 11th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 14th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby find that the compensatory damages awarded to the plaintiff of Thirty-Two Thousand Five Hundred Dollars ($32,500.00) have been fully satisfied as a result of pre-trial settlements.

The Court does hereby HOLD and ORDER that the Defendants Keene Corporation and Owens-Corning Fiberglas shall pay no monies to the plaintiff as compensatory damages. However, pursuant to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the plaintiff the sum of Thirty Thousand Dollars ($30,000.00) as punitive and exemplary damages and the Defendant Keene Corporation is ordered to pay the plaintiff the sum of Five Thousand

Dollars ($5,000.00) in punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Thirty Thousand Dollars ($30,000.00) prior to perfecting any appeal in this matter, plus an additional amount of $3,000.00 Dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Five Thousand Dollars ($5,000.00) prior to perfecting any appeal in this matter, plus an additional amount of $500.00 Dollars.

This Court previously having ruled that the cases listed herein did not

involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 11th day of March, 1991.

/s/LARRY V. STARCHER
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-764

GARLEN R. BURTON, et al.

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 11th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 14th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby find that the compensatory damages awarded to the plaintiff of Twenty-Nine Thousand Five Hundred Dollars ($29,500.00) have been fully satisfied as a result of pre-trial settlements.

The Court does hereby HOLD and ORDER that the Defendants Keene Corporation and Owens-Corning Fiberglas shall pay no monies to the plaintiff as compensatory damages. However, pursuant to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the plaintiff the sum of Thirty Thousand Dollars ($30,000.00) as punitive and exemplary damages and the Defendant Keene Corporation is ordered to pay the plaintiff the sum of Five Thousand

Dollars ($5,000.00) in punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Thirty Thousand Dollars ($30,000.00) prior to perfecting any appeal in this matter, plus an additional amount of $3,000.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Five Thousand Dollars ($5,000.00) prior to perfecting any appeal in this matter, plus an additional amount of $500.00 Dollars.

This Court previously having ruled that the cases listed herein did not

involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the court.

ENTERED under my hand this 11th day of March, 1991.

/s/LARRY V. STARCHER
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-764

GEORGE R. CAMPBELL, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 11th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 14th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff George Campbell's compensatory damages were determined by the Jury to be Fifty-One Thousand Dollars ($51,000.00). The Court does hereby further find that the Plaintiff George Campbell had negotiaged settlements in his case totalling Thirty-Nine Thousand Seventy-Five Dollars ($39,075.00) prior to said verdict. The Court does in addition find that One Thousand Seven Hundred Twenty-Five Dollars ($1,725.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the Fifty-One Thousand Dollars

($51,000.00) compensatory verdict shall be Thirty-Seven Thousand Three Hundred Fifty Dollars ($37,350.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendants against whom Plaintiff was awarded a verdict both jointly and severally was the Defendants Owens-Corning Fiberglas Corporation and Keene Corporation. The Defendants Owens-Corning Fiberglas and Keene Corporation is therefore ORDERED to pay unto the Plaintiff both jointly and severally the sum of Thirteen Thousand Six Hundred Fifty Dollars ($13,650.00) plus interest thereon from the date of the jury verdict on November 14, 1990, until paid.

In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the Plaintiff the sum of

Thirty Thousand Dollars ($30,000.00) as punitive and exemplary damages. The Defendant Keene Corporation is ordered to pay the Plaintiff the sum of Five Thousand Dollars ($5,000.00) as punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Forty-Three Thousand Six Hundred Fifty Dollars ($43,650.00) prior to perfecting any appeal in this matter, plus an additional amount of $4,400.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Eighteen Thousand Six Hundred Fifty

Dollars ($18,650.00) prior to perfecting any appeal in this matter, plus an additional amount of $1,900.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 11th day of March, 1991.

/s/LARRY V. STARCHER
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-764

LESLIE B. CARR, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 11th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 14th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff Leslie B. Carr's compensatory damages were determined by the Jury to be Twenty-Eight Thousand Five Hundred Dollars ($28,500.00). The Court does hereby further find that the Plaintiff Leslie B. Carr had negotiaged settlements in his case totalling Twenty-Eight Thousand Seventy-Five Dollars ($28,075.00) prior to said verdict. The Court does in addition find that One Thousand Seven Hundred Twenty-Five Dollars ($1,725.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the Twenty-Eight Thousand Five

Hundred Dollars ($28,500.00) compensatory verdict shall be Twenty-Six Thousand Three Hundred Fifty Dollars ($26,350.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendants against whom Plaintiff was awarded a verdict both jointly and severally was the Defendants Owens-Corning Fiberglas Corporation and Keene Corporation. The Defendants Owens-Corning Fiberglas and Keene Corporation is therefore ORDERED to pay unto the Plaintiff both jointly and severally the sum of Two Thousand One Hundred Fifty Dollars ($2,150.00) plus interest thereon from the date of the jury verdict on November 14, 1990, until paid.

In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is

ordered to pay the Plaintiff the sum of Thirty Thousand Dollars ($30,000.00) as punitive and exemplary damages. The Defendant Keene Corporation is ordered to pay the Plaintiff the sum of Five Thousand Dollars ($5,000.00) as punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Thirty-Two Thousand One Hundred Fifty Dollars ($32,150.00) prior to perfecting any appeal in this matter, plus an additional amount of $3,300.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of

Seven Thousand One Hundred Fifty Dollars ($7,150.00) prior to perfecting any appeal in this matter, plus an additional amount of $7,200.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and

parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 11th day of March, 1991.

/s/LARRY V. STARCHER
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-764

JOHN CHAPMAN, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 11th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 14th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff John Chapman's compensatory damages were determined by the Jury to be Three Hundred Twenty-Four Thousand Two Hundred Dollars ($324,200.00). The Court does hereby further find that the Plaintiff John Chapman had negotiaged settlements in his case totalling One Hundred Forty-Four Thousand Eight Hundred Dollars ($144,800.00) prior to said verdict. The Court does in addition find that Nine Thousand Six Hundred Dollars ($9,600.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the

Three Hundred Twenty Four Thousand Two Hundred Dollars ($324,200.00) compensatory verdict shall be One Hundred Thirty-Five Thousand Two Hundred Dollars ($135,200.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendants against whom Plaintiff was awarded a verdict both jointly and severally was the Defendants Owens-Corning Fiberglas Corporation and Keene Corporation. The Defendants Owens-Corning Fiberglas and Keene Corporation is therefore ORDERED to pay unto the Plaintiff both jointly and severally the sum of One Hundred Eighty-Nine Thousand Dollars ($189,000.00) plus interest thereon from the date of the jury verdict on November 14, 1990, until paid.

In addition to the jury's verdict in the above-styled action, the Defendant

Owens-Corning Fiberglas Corporation is ordered to pay the Plaintiff the sum of Thirty Thousand Dollars ($30,000.00) as punitive and exemplary damages. The Defendant Keene Corporation is ordered to pay the Plaintiff the sum of Five Thousand Dollars ($5,000.00) as punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Two Hundred Nineteen Thousand Dollars ($219,000.00) prior to perfecting any appeal in this matter, plus an additional amount of $22,000.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of One Hundred Ninety-Four Thousand Dollars ($194,000.00) prior to perfecting any appeal in this matter, plus an additional amount of $20,000.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims

for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 11th day of March, 1991.

/s/LARRY V. STARCHER
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-764

ARVILLE DALTON, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 11th day of March, 1990, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 14th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby find that the compensatory damages awarded to the plaintiff of Twenty Thousand Dollars ($20,000.00) have been fully satisfied as a result of pre-trial settlements.

The Court does hereby HOLD and ORDER that the Defendants Keene Corporation and Owens-Corning Fiberglas shall pay no monies to the plaintiff as compensatory damages. However, pursuant to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the plaintiff the sum of Thirty Thousand Dollars ($30,000.00) as punitive and exemplary damages and the Defendant Keene Corporation is ordered to pay the plaintiff the sum of Five Thousand Dollars ($5,000.00) in punitive and

exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Thirty Thousand Dollars ($30,000.00) prior to perfecting any appeal in this matter, plus an additional amount of $3,000.00 Dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Five Thousand Dollars ($5,000.00) prior to perfecting any appeal in this matter, plus an additional amount of $500.00 Dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently

developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 11th day of March, 1991.

/s/LARRY V. STARCHER
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 36-C-831

JAMES R. DARRAH, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 11th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 14th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff James Darrah's compensatory damages were determined by the Jury to be Fifty-Nine Thousand Five Hundred Dollars ($59,500.00). The Court does hereby further find that the Plaintiff James Darrah had negotiated settlements in his case totalling Thirty-Eight Thousand Five Hundred Fifty Dollars ($38,550.00) prior to said verdict. The Court does in addition find that Three Thousand Six Hundred Dollars ($3,600.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the Fifty-Nine Thousand Five Hundred Dollars

($59,500.00) compensatory verdict shall be Thirty-Four Thousand Nine Hundred Fifty Dollars ($34,950.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendants against whom Plaintiff was awarded a verdict both jointly and severally was the Defendants Owens-Corning Fiberglas Corporation and Keene Corporation. The Defendants Owens-Corning Fiberglas and Keene Corporation is therefore ORDERED to pay unto the Plaintiff both jointly and severally the sum of Twenty-Four Thousand Five Hundred Fifty Dollars ($24,550.00) plus interest thereon from the date of the jury verdict on November 14, 1990, until paid.

In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the Plaintiff the sum of

Thirty Thousand Dollars ($30,000.00) as punitive and exemplary damages. The Defendant Keene Corporation is ordered to pay the Plaintiff the sum of Five Thousand Dollars ($5,000.00) as punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Fifty-Four Thousand Five Hundred Fifty Dollars ($54,550.00) prior to perfecting any appeal in this matter, plus an additional amount of $5,500.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Twenty-Nine Thousand Five Hundred Fifty

Dollars ($29,550.00) prior to perfecting any appeal in this matter, plus an additional amount of $3,000.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 11th day of March, 1991.

/s/LARRY V. STARCHER
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-764

PAUL DUNN, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 11th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 14th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby find that the compensatory damages awarded to the plaintiff of Thirty Thousand Seven Hundred Fifty Dollars ($30,750.00) have been fully satisfied as a result of pre-trial settlements.

The Court does hereby HOLD and ORDER that the Defendants Keene Corporation and Owens-Corning Fiberglas shall pay no monies to the plaintiff as compensatory damages. However, pursuant to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the plaintiff the sum of Thirty Thousand Dollars ($30,000.00) as punitive and exemplary damages and the Defendant Keene Corporation is ordered to pay the plaintiff the sum of Five Thousand

Dollars ($5,000.00) in punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Thirty Thousand Dollars ($30,000.00) prior to perfecting any appeal in this matter, plus an additional amount of $3,000.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Five Thousand Dollars ($5,000.00) prior to perfecting any appeal in this matter, plus an additional amount of $500.00 Dollars.

This Court previously having ruled that the cases listed herein did not

involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 11th day of March, 1991.

/s/LARRY V. STARCHER
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-832

TERRY LEE ENGLAND,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 11th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 14th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby find that the compensatory damages awarded to the plaintiff of Fifteen Thousand Dollars ($15,000.00) have been fully satisfied as a result of pre-trial settlements.

The Court does hereby HOLD and ORDER that the Defendants Keene Corporation and Owens-Corning Fiberglas shall pay no monies to the plaintiff as compensatory damages. However, pursuant to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the plaintiff the sum of Thirty Thousand Dollars ($30,000.00) as punitive and exemplary damages and the Defendant Keene Corporation is ordered to pay the plaintiff the sum of Five Thousand Dollars ($5,000.00) in punitive and

exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Thirty Thousand Dollars ($30,000.00) prior to perfecting any appeal in this matter, plus an additional amount of $3,000.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Five Thousand Dollars ($5,000.00) prior to perfecting any appeal in this matter, plus an additional amount of $500.00 Dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently

developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 11th day of March, 1991.

/s/LARRY V. STARCHER
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-764

WILLIAM M. GABBERT,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 11th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 14th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff William M. Gabbert's compensatory damages were determined by the Jury to be Thirty-Eight Thousand Dollars ($38,000.00). The Court does hereby further find that the Plaintiff William M. Gabbert had negotiaged settlements in his case totalling Thirty-One Thousand Two Hundred Twenty-Five Dollars ($31,225.00) prior to said verdict. The Court does in addition find that Two Thousand Eight Hundred Seventy-Five Dollars ($2,875.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the Thirty-Eight

Thousand Dollars ($38,000.00) compensatory verdict shall be Twenty-Eight Thousand Three Hundred Fifty Dollars ($28,350.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendants against whom Plaintiff was awarded a verdict both jointly and severally was the Defendants Owens-Corning Fiberglas Corporation and Keene Corporation. The Defendants Owens-Corning Fiberglas and Keene Corporation is therefore ORDERED to pay unto the Plaintiff both jointly and severally the sum of Nine Thousand Six Hundred Fifty Dollars ($9,650.00) plus interest thereon from the date of the jury verdict on November 14, 1990, until paid.

In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is

ordered to pay the Plaintiff the sum of Thirty Thousand Dollars ($30,000.00) as punitive and exemplary damages. The Defendant Keene Corporation is ordered to pay the Plaintiff the sum of Five Thousand Dollars ($5,000.00) as punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Thirty-Nine Thousand Six Hundred Fifty Dollars ($39,650.00) prior to perfecting any appeal in this matter, plus an additional amount of $4,000.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of

Fourteen Thousand Six Hundred Fifty Dollars ($14,650.00) prior to perfecting any appeal in this matter, plus an additional amount of $1,500.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and

parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 11th day of March, 1991.

/s/LARRY V. STARCHER
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning
Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-764

GEORGE F. HOSCHAR, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 11th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 14th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff George Hoschar's compensatory damages were determined by the Jury to be One Hundred Seventy-Eight Thousand Nine Hundred Ninety Dollars ($178,990.00). The Court does hereby further find that the Plaintiff George Hoschar had negotiaged settlements in his case totalling Seventy-Three Thousand Three Hundred Dollars ($73,300.00) prior to said verdict. The Court does in addition find that Four Thousand Eight Hundred Dollars ($4,800.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the

One Hundred Seventy-Eight Thousand Nine Hundred Ninety Dollars ($178,990.00) compensatory verdict shall be Sixty-Eight Thousand Five Hundred Dollars ($68,500.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendants against whom Plaintiff was awarded a verdict both jointly and severally was the Defendants Owens-Corning Fiberglas Corporation and Keene Corporation. The Defendants Owens-Corning Fiberglas and Keene Corporation is therefore ORDERED to pay unto the Plaintiff both jointly and severally the sum of One Hundred Ten Thousand Four Hundred Ninety Dollars ($110,490.00) plus interest thereon from the date of the jury verdict on November 14, 1990, until paid.

In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the Plaintiff the sum of Thirty Thousand Dollars ($30,000.00) as punitive and exemplary damages. The Defendant Keene Corporation is ordered to pay the Plaintiff the sum of Five Thousand Dollars ($5,000.00) as punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of One Hundred Forty Thousand Four Hundred Ninety Dollars ($140,490.00) prior to perfecting any

appeal in this matter, plus an additional amount of $15,000.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of One Hundred Fifteen Thousand Four Hundred Ninety Dollars ($115,490.00) prior to perfecting any appeal in this matter, plus an additional amount of $11,500.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court

has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 11th day of March, 1991.

/s/LARRY V. STARCHER
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning
Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-763

EVERETT E. JOHNSON, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 11th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 14th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff Everett E. Johnson's compensatory damages were determined by the Jury to be Fifty-Eight Thousand Five Hundred Dollars ($58,500.00). The Court does hereby further find that the Plaintiff Everett Johnson had negotiaged settlements in his case totalling Twenty-Five Thousand Five Hundred Seventy-Five Dollars ($25,575.00) prior to said verdict. The Court does in addition find that One Thousand Seven Hundred Twenty-Five Dollars ($1,725.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the

Fifty-Eight Thousand Five Hundred Dollars ($58,500.00) compensatory verdict shall be Twenty-Three Thousand Eight Hundred Fifty Dollars ($23,850.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendants against whom Plaintiff was awarded a verdict both jointly and severally was the Defendants Owens-Corning Fiberglas Corporation and Keene Corporation. The Defendants Owens-Corning Fiberglas and Keene Corporation is therefore ORDERED to pay unto the Plaintiff both jointly and severally the sum of Thirty-Four Thousand Six Hundred Fifty Dollars ($34,650.00) plus interest thereon from the date of the jury verdict on November 14, 1990, until paid.

In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is

ordered to pay the Plaintiff the sum of Thirty Thousand Dollars ($30,000.00) as punitive and exemplary damages. The Defendant Keene Corporation is ordered to pay the Plaintiff the sum of Five Thousand Dollars ($5,000.00) as punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Sixty-Four Thousand Six Hundred Fifty Dollars ($64,650.00) prior to perfecting any appeal in this matter, plus an additional amount of $6,500.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of

Thirty-Nine Thousand Six Hundred Fifty Dollars ($39,650.00) prior to perfecting any appeal in this matter, plus an additional amount of $4,000.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and

parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 11th day of March, 1990.

/s/LARRY V. STARCHER
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning
Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-764

JAMES R. KIRK, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 11th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 14th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff James R. Kirk's compensatory damages were determined by the Jury to be Twenty-Nine Thousand Dollars ($29,000.00). The Court does hereby further find that the Plaintiff James R. Kirk had negotiaged settlements in his case totalling Twenty-Seven Thousand Twenty-Five Dollars ($27,025.00) prior to said verdict. The Court does in addition find that One Thousand Seven Hundred Twenty-Five Dollars ($1,725.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the Twenty-Nine Thousand Dollars ($29,000.00)

compensatory verdict shall be Twenty-Five Thousand Three Hundred Dollars ($25,300.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendants against whom Plaintiff was awarded a verdict both jointly and severally was the Defendants Owens-Corning Fiberglas Corporation and Keene Corporation. The Defendants Owens-Corning Fiberglas and Keene Corporation is therefore ORDERED to pay unto the Plaintiff both jointly and severally the sum of Three Thousand Seven Hundred Dollars ($3,700.00) plus interest thereon from the date of the jury verdict on November 14, 1990, until paid.

In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the Plaintiff the sum of

Thirty Thousand Dollars ($30,000.00) as punitive and exemplary damages. The Defendant Keene Corporation is ordered to pay the Plaintiff the sum of Five Thousand Dollars ($5,000.00) as punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Thirty-Three Thousand Seven Hundred Dollars ($33,700.00) prior to perfecting any appeal in this matter, plus an additional amount of $3,400.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Eight Thousand Seven Hundred Dollars

($8,700.00) prior to perfecting any appeal in this matter, plus an additional amount of $900.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 11th day of March, 1991.

/s/LARRY V. STARCHER
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning
Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-830

WILLIAM E. KITTLE, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 11th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 14th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff William E. Kittle's compensatory damages were determined by the Jury to be Fifty-Six Thousand Dollars ($56,000.00). The Court does hereby further find that the Plaintiff William E. Kittle had negotiated settlements in his case totalling Twenty-Four Thousand Eight Hundred Twenty-Five Dollars ($24,825.00) prior to said verdict. The Court does in addition find that One Thousand Seven Hundred Twenty-Five Dollars ($1,725.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the Fifty-Six

Thousand Dollars ($56,000.00) compensatory verdict shall be Twenty-Three Thousand One Hundred Dollars ($23,100.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendants against whom Plaintiff was awarded a verdict both jointly and severally was the Defendants Owens-Corning Fiberglas Corporation and Keene Corporation. The Defendants Owens-Corning Fiberglas and Keene Corporation is therefore ORDERED to pay unto the Plaintiff both jointly and severally the sum of Thirty-Two Thousand Nine Hundred Dollars ($32,900.00) plus interest thereon from the date of the jury verdict on November 14, 1990, until paid.

In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is

ordered to pay the Plaintiff the sum of Thirty Thousand Dollars ($30,000.00) as punitive and exemplary damages. The Defendant Keene Corporation is ordered to pay the Plaintiff the sum of Five Thousand Dollars ($5,000.00). Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Sixty-Two Thousand Nine Hundred Dollars ($62,900.00) prior to perfecting any appeal in this matter, plus an additional amount of $6,300.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of

Thirty-Seven Thousand Nine Hundred Dollars ($37,900.00) prior to perfecting any appeal in this matter, plus an additional amount of $3,800.00 dollars.

This Court previously having ruled that the cases listed herein did not invclve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and

parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 11th day of March, 1991.

/s/LARRY V. STARCHER
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-833

FOSTER A. LIPSCOMB, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 11th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 14th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby find that the compensatory damages awarded to the plaintiff of Thirty-Five Thousand Five Hundred Dollars ($35,500.00) have been fully satisfied as a result of pre-trial settlements.

The Court does hereby HOLD and ORDER that the Defendants Keene Corporation and Owens-Corning Fiberglas shall pay no monies to the plaintiff as compensatory damages. However, pursuant to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the plaintiff the sum of Thirty Thousand Dollars ($30,000.00) as punitive and exemplary damages and the Defendant Keene Corporation is ordered to pay the plaintiff the sum of Five Thousand

Dollars ($5,000.00) in punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Thirty Thousand Dollars ($30,000.00) prior to perfecting any appeal in this matter, plus an additional amount of $3,000.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Five Thousand Dollars ($5,000.00) prior to perfecting any appeal in this matter, plus an additional amount of $500.00 Dollars.

This Court previously having ruled that the cases listed herein did not

involve claims for risk of subsequently developing lung cancer or mesothelioma, but rather were claims for asbestos pleural disease, parenchymal asbestosis, and colon cancer, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related lung malignancy. The Court has specifically ruled that claims for asbestos-related lung malignancies constitute causes of actions separate from claims for asbestos pleural disease, parenchymal asbestosis, laryngeal or colon cancer and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 11th day of March, 1991.

/s/LARRY V. STARCHER
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-763

NELSON E. LOTT, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 11th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 14th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff Nelson E. Lott's compensatory damages were determined by the Jury to be Seventy-Eight Thousand Six Hundred Dollars ($78,600.00). The Court does hereby further find that the Plaintiff Nelson E. Lott had negotiaged settlements in his case totalling Thirty-Seven Thousand Two Hundred Dollars ($37,200.00) prior to said verdict. The Court does in addition find that Three Thousand Three Hundred Dollars ($3,300.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the Seventy-Eight Thousand Six

Hundred Dollars ($78,600.00) compensatory verdict shall be Thirty-Three Thousand Nine Hundred Dollars ($33,900.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendants against whom Plaintiff was awarded a verdict both jointly and severally was the Defendants Owens-Corning Fiberglas Corporation and Keene Corporation. The Defendants Owens-Corning Fiberglas and Keene Corporation is therefore ORDERED to pay unto the Plaintiff both jointly and severally the sum of Forty-Four Thousand Seven Hundred Dollars ($44,700.00) plus interest thereon from the date of the jury verdict on November 14, 1990, until paid.

In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is

ordered to pay the Plaintiff the sum of Thirty Thousand Dollars ($30,000.00) as punitive and exemplary damages. The Defendant Keene Corporation is ordered to pay the Plaintiff the sum of Five Thousand Dollars ($5,000.00). Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Seventy-Four Thousand Seven Hundred Dollars ($74,700.00) prior to perfecting any appeal in this matter, plus an additional amount of $7,500.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of

Forty-Nine Thousand Seven Hundred Dollars ($49,700.00) prior to perfecting any appeal in this matter, plus an additional amount of $5,000.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developed cancer and mesothelioma, but rather were claims for asbestos pleural disease, parenchymal asbestosis, and laryngeal cancer including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related lung malignancy, including, lung cancer or mesothelioma. The Court has specifically ruled that claims for asbestos-related lung malignancies constitute causes of actions separate

from claims for asbestos pleural disease, parenchymal asbestosis, laryngeal or colon cancer, and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 11th day of March, 1991.

/s/LARRY V. STARCHER
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 87-C-7

GEORGE V. MEHALIC, JR., et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 11th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 14th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff George V. Mehalic's compensatory damages were determined by the Jury to be Thirty-Nine Thousand Dollars ($39,000.00). The Court does hereby further find that the Plaintiff George Mehalic had negotiaged settlements in his case totalling Twenty-Six Thousand One Hundred Seventy-Five Dollars ($26,175.00) prior to said verdict. The Court does in addition find that One Thousand Seven Hundred Twenty-Five Dollars ($1,725.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the Thirty-Nine

Thousand Dollars ($39,000.00) compensatory verdict shall be Twenty-Four Thousand Four Hundred Fifty Dollars ($24,450.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendants against whom Plaintiff was awarded a verdict both jointly and severally was the Defendants Owens-Corning Fiberglas Corporation and Keene Corporation. The Defendants Owens-Corning Fiberglas and Keene Corporation is therefore ORDERED to pay unto the Plaintiff both jointly and severally the sum of Fourteen Thousand Five Hundred Fifty Dollars ($14,550.00) plus interest thereon from the date of the jury verdict on November 14, 1990, until paid.

In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is

ordered to pay the Plaintiff the sum of Thirty Thousand Dollars ($30,000.00) as punitive and exemplary damages. The Defendant Keene Corporation is ordered to pay the Plaintiff the sum of Five Thousand Dollars ($5,000.00) as punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Forty-Four Thousand Five Hundred Fifty Dollars ($44,550.00) prior to perfecting any appeal in this matter, plus an additional amount of $4,500.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of

Nineteen Thousand Five Hundred Fifty Dollars ($19,550.00) prior to perfecting any appeal in this matter, plus an additional amount of $2,000.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and

parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 11th day of March, 1991.

/s/LARRY V. STARCHER
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning
Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-763

JERYL C. ROOT, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 11th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 14th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff Jeryl C. Root's compensatory damages were determined by the Jury to be Thirty-Eight Thousand Five Hundred Dollars ($38,500.00). The Court does hereby further find that the Plaintiff Jeryl C. Root had negotiaged settlements in his case totalling Thirty-One Thousand Four Hundred Seventy-Five Dollars ($31,475.00) prior to said verdict. The Court does in addition find that One Thousand Seven Hundred Twenty-Five Dollars ($1,725.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the

Thirty-Eight Thousand Five Hundred Dollars ($38,500.00) compensatory verdict shall be Twenty-Nine Thousand Seven Hundred Fifty Dollars ($29,750.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendants against whom Plaintiff was awarded a verdict both jointly and severally was the Defendants Owens-Corning Fiberglas Corporation and Keene Corporation. The Defendants Owens-Corning Fiberglas and Keene Corporation is therefore ORDERED to pay unto the Plaintiff both jointly and severally the sum of Eight Thousand Seven Hundred Fifty Dollars ($8,750.00) plus interest thereon from the date of the jury verdict on November 14, 1990, until paid.

In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is

ordered to pay the Plaintiff the sum of Thirty Thousand Dollars ($30,000.00) as punitive and exemplary damages. The Defendant Keene Corporation is ordered to pay to the Plaintiff the sum of Five Thousand Dollars ($5,000.00) as punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Thirty-Eight Thousand Seven Hundred Fifty Dollars ($38,750.00) prior to perfecting any appeal in this matter, plus an additional amount of $4,000.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of

Thirteen Thousand Seven Hundred Fifty Dollars ($13,750.00) prior to perfecting any appeal in this matter, plus an additional amount of $1,400.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and

parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 11th day of March, 1991.

/s/LARRY V. STARCHER
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning
Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-782

STANLEY E. ROWE, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 11th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 14th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby find that the compensatory damages awarded to the plaintiff of Fifteen Thousand Dollars ($15,000.00) have been fully satisfied as a result of pre-trial settlements.

The Court does hereby HOLD and ORDER that the Defendants Keene Corporation and Owens-Corning Fiberglas shall pay no monies to the plaintiff as compensatory damages. However, pursuant to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the plaintiff the sum of Thirty Thousand Dollars ($30,000.00) as punitive and exemplary damages and the Defendant Keene Corporation is ordered to pay the plaintiff the sum of Five Thousand Dollars ($5,000.00) in punitive and

exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Thirty Thousand Dollars ($30,000.00) prior to perfecting any appeal in this matter, plus an additional amount of $3,000.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Five Thousand Dollars ($5,000.00) prior to perfecting any appeal in this matter, plus an additional amount of $500.00 Dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently

developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 11th day of March, 1991.

/s/LARRY V. STARCHER
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-832

JOSEPH L. SBERNA, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 11th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 14th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff Joseph L. Sberna's compensatory damages were determined by the Jury to be Thirty-Seven Thousand Dollars ($37,000.00). The Court does hereby further find that the Plaintiff Joseph L. Sberna had negotiaged settlements in his case totalling Twenty-Eight Thousand Five Hundred Twenty-Five Dollars ($28,525.00) prior to said verdict. The Court does in addition find that One Thousand Seven Hundred Twenty-Five Dollars ($1,725.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the Thirty-Seven

Thousand Dollars ($37,000.00) compensatory verdict shall be Twenty-Six Thousand Eight Hundred Dollars ($26,800.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendants against whom Plaintiff was awarded a verdict both jointly and severally was the Defendants Owens-Corning Fiberglas Corporation and Keene Corporation. The Defendants Owens-Corning Fiberglas and Keene Corporation is therefore ORDERED to pay unto the Plaintiff both jointly and severally the sum of Ten Thousand Two Hundred Dollars ($10,200.00) plus interest thereon from the date of the jury verdict on November 14, 1990, until paid.

In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is

ordered to pay the Plaintiff the sum of Thirty Thousand Dollars ($30,000.00) as punitive and exemplary damages. The Defendant Keene Corporation is ordered to pay the Plaintiff the sum of Five Thousand Dollars ($5,000.00) as punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Forty Thousand Two Hundred Dollars ($40,200.00) prior to perfecting any appeal in this matter, plus an additional amount of $4,000.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of

Fifteen Thousand Two Hundred Dollars ($15,200.00) prior to perfecting any appeal in this matter, plus an additional amount of $1,500.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and

parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 11th day of March, 1991.

/s/LARRY V. STARCHER
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-764

JOSEPH E. SHILOT, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 11th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 14th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby find that the compensatory damages awarded to the plaintiff of Twenty-Two Thousand Dollars ($22,000.00) have been fully satisfied as a result of pre-trial settlements.

The Court does hereby HOLD and ORDER that the Defendants Keene Corporation and Owens-Corning Fiberglas shall pay no monies to the plaintiff as compensatory damages. However, pursuant to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the plaintiff the sum of Thirty Thousand Dollars ($30,000.00) as punitive and exemplary damages and the Defendant Keene Corporation is ordered to pay the plaintiff the sum of Five Thousand Dollars ($5,000.00) in punitive and

exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Thirty Thousand Dollars ($30,000.00) prior to perfecting any appeal in this matter, plus an additional amount of $3,000.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Five Thousand Dollars ($5,000.00) prior to perfecting any appeal in this matter, plus an additional amount of $500.00 Dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently

developed lung cancer or mesothelioma, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer and colon cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related lung malignancy, including lung cancer or mesothelioma. The Court has specifically ruled that claims for asbestos-related lung malignancies constitute causes of actions separate from claims for asbestos pleural disease, parenchymal asbestosis, laryngeal or colon cancer and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 11th day of March, 1991.

/s/LARRY V. STARCHER
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-781

CHARLES BARNES,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 12th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 13th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff Charles Barnes' compensatory damages were determined by the Jury to be Twenty-Eight Thousand Dollars ($28,000.00). The Court does hereby further find that the Plaintiff Charles Barnes had negotiaged settlements in his case totalling Twenty-Three Thousand Nine Hundred Twenty-Five Dollars ($23,925.00) prior to said verdict. The Court does in addition find that One Thousand Seven Hundred Twenty-Five Dollars ($1,725.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the Twenty-Eight Thousand

Dollars ($28,000.00) compensatory verdict shall be Twenty-Two Thousand Two Hundred Dollars ($22,200.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendants against whom Plaintiff was awarded a verdict both jointly and severally was the Defendants Owens-Corning Fiberglas Corporation and Keene Corporation. The Defendants Owens-Corning Fiberglas and Keene Corporation is therefore ORDERED to pay unto the Plaintiff both jointly and severally the sum of Five Thousand Eight Hundred Dollars ($5,800.00) plus interest thereon from the date of the jury verdict on November 13, 1990, until paid. In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the Plaintiff the sum of Two

Hundred Fifty Thousand Dollars ($250,000.00) as punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Two Hundred Fifty-Five Thousand Eight Hundred Dollars ($255,800.00) prior to perfecting any appeal in this matter, plus an additional amount of $25,580.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Five Thousand Eight Hundred Dollars ($5,800.00) prior to perfecting any appeal in this matter, plus an additional amount of $580.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 12th day of March, 1991.

/s/ROBERT B. STONE
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-764

ALLEN CAMPBELL, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 12th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 13th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff Allen Campbell's compensatory damages were determined by the Jury to be Forty-Two Thousand Dollars ($42,000.00). The Court does hereby further find that the Plaintiff Allen Campbell had negotiaged settlements in his case totalling Thirty-Two Thousand Five Hundred Twenty-Five Dollars ($32,525.00) prior to said verdict. The Court does in addition find that One Thousand Seven Hundred Twenty-Five Dollars ($1,725.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the Forty-Two Thousand Dollars

($42,000.00) compensatory verdict shall be Thirty Thousand Eight Hundred Dollars ($30,800.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendants against whom Plaintiff was awarded a verdict both jointly and severally was the Defendants Owens-Corning Fiberglas Corporation and Keene Corporation. The Defendants Owens-Corning Fiberglas and Keene Corporation is therefore ORDERED to pay unto the Plaintiff both jointly and severally the sum of Eleven Thousand Two Hundred Dollars ($11,200.00) plus interest thereon from the date of the jury verdict on November 13, 1990, until paid. In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the Plaintiff the sum of Two

Hundred Fifty Thousand Dollars ($250,000.00) as punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Two Hundred Sixty-One Thousand Two Hundred Dollars ($261,200.00) prior to perfecting any appeal in this matter, plus an additional amount of $26,120.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Eleven Thousand Two Hundred Dollars ($11,200.00) prior to perfecting any appeal in this matter, plus an additional amount of $1,120.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 12th day of March, 1991.

/s/ROBERT B. STONE
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-832

GARY FITZSIMMONS, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 12th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 13th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff Gary Fitzsimmons' compensatory damages were determined by the Jury to be Twenty-Seven Thousand Dollars ($27,000.00). The Court does hereby further find that the Plaintiff Gary Fitzsimmons had negotiaged settlements in his case totalling Twenty-Five Thousand Three Hundred Seventy-Five Dollars ($25,375.00) prior to said verdict. The Court does in addition find that Two Thousand Eight Hundred Seventy-Five Dollars ($2,875.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the Twenty-Seven

Thousand Dollars ($27,000.00) compensatory verdict shall be Twenty-Two Thousand Five Hundred Dollars ($22,500.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendant whom Plaintiff went to verdict against was the Defendant Owens-Corning Fiberglas Corporation. The Defendant Owens-Corning Fiberglas is therefore ORDERED to pay unto the Plaintiff the sum of Four Thousand Five Hundred Dollars ($4,500.00) plus interest thereon from the date of the jury verdict on November 13, 1990, until paid. In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the Plaintiff the sum of Two Hundred Fifty Thousand Dollars ($250,000.00) as punitive and exemplary

damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Two Hundred Fifty-Four Thousand Five Hundred Dollars ($254,500.00) prior to perfecting any appeal in this matter, plus an additional amount of $25,450.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment

pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 12th day of March, 1991.

/s/ROBERT B. STONE
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning
Fiberglas Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-763

GEORGE FRAZIER, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 12th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 13th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff George Frazier's compensatory damages were determined by the Jury to be Sixty-Three Thousand Dollars ($63,000.00). The Court does hereby further find that the Plaintiff George Frazier had negotiated settlements in his case totalling Twenty-Five Thousand One Hundred Twenty-Five Dollars ($25,125.00) prior to said verdict. The Court does in addition find that One Thousand Seven Hundred Twenty-Five Dollars ($1,725.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the Sixty Three Thousand

Dollars ($63,000.00) compensatory verdict shall be Twenty Three Thousand Four Hundred Dollars ($23,400.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendants against whom Plaintiff was awarded a verdict both jointly and severally was the Defendants Owens-Corning Fiberglas Corporation and Keene Corporation. The Defendants Owens-Corning Fiberglas and Keene Corporation is therefore ORDERED to pay unto the Plaintiff both jointly and severally the sum of Thirty Nine Thousand Six Hundred Dollars ($39,600.00) plus interest thereon from the date of the jury verdict on November 13, 1990, until paid. In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the Plaintiff the sum of Two

Hundred Fifty Thousand Dollars ($250,000.00) as punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Two Hundred Eighty-Nine Thousand Six Hundred Dollars ($289,600.00) prior to perfecting any appeal in this matter, plus an additional amount of $28,960.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Thirty-Nine Thousand Six Hundred Dollars ($39,600.00) prior to perfecting any appeal in this matter, plus an additional amount of $3,960.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 12th day of March, 1991.

/s/ROBERT B. STONE
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-764

TERRANCE HARRAH, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 12th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 13th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff Terrance Harrah's compensatory damages were determined by the Jury to be Thirty-Six Thousand Dollars ($36,000.00). The Court does hereby further find that the Plaintiff Terrance Harrah had negotiaged settlements in his case totalling Twenty-Seven Thousand Five Hundred Seventy-Five Dollars ($27,575.00) prior to said verdict. The Court does in addition find that One Thousand Seven Hundred Twenty-Five Dollars ($1,725.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the Thirty-six

Thousand Dollars ($36,000.00) shall be Twenty-Five Thousand eight Hundred Fifty Dollars ($25,850.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendants against whom Plaintiff was awarded a verdict both jointly and severally was the Defendants Owens-Corning Fiberglas Corporation and Keene Corporation. The Defendants Owens-Corning Fiberglas and Keene Corporation is therefore ORDERED to pay unto the Plaintiff both jointly and severally the sum of Ten Thousand One Hundred Fifty Dollars ($10,150.00) plus interest thereon from the date of the jury verdict on November 13, 1990, until paid. In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the Plaintiff the sum of Two

Hundred Fifty Thousand Dollars ($250,000.00) as punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Two Hundred Sixty Thousand One Hundred Fifty Dollars ($260,150.00) prior to perfecting any appeal in this matter, plus an additional amount of $26,015.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Ten Thousand One Hundred Fifty Dollars ($10,150.00) prior to perfecting any appeal in this matter, plus an additional amount of $1,015.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 12th day of March, 1991.

/s/ROBERT B. STONE
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-764

WILLIAM HEABERLIN, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 12th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 13th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff William Heaberlin's compensatory damages were determined by the Jury to be Forty Thousand Dollars ($40,000.00). The Court does hereby further find that the Plaintiff William Heaberlin had negotiaged settlements in his case totalling Twenty-Six Thousand Five Hundred Twenty-Five Dollars ($26,525.00) prior to said verdict. The Court does in addition find that One Thousand Seven Hundred Twenty-Five Dollars ($1,725.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the Forty

Thousand Dollars ($40,000.00) compensatory verdict shall be Twenty-Four Thousand Eight Hundred Dollars ($24,800.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendants against whom Plaintiff was awarded a verdict both jointly and severally was the Defendants Owens-Corning Fiberglas Corporation and Keene Corporation. The Defendants Owens-Corning Fiberglas and Keene Corporation is therefore ORDERED to pay unto the Plaintiff both jointly and severally the sum of Fifteen Thousand Two Hundred Dollars ($15,200.00) plus interest thereon from the date of the jury verdict on November 13, 1990, until paid. In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered

to pay the Plaintiff the sum of Two Hundred Fifty Thousand Dollars ($250,000.00) as punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Two Hundred Sixty-Five Thousand Two Hundred Dollars ($265,200.00) prior to perfecting any appeal in this matter, plus an additional amount of $26,520.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Fifteen Thousand Two Hundred Dollars ($15,200.00) prior to perfecting any

appeal in this matter, plus an additional amount of $1,520.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 12th day of March, 1991.

/s/ROBERT B. STONE
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-815

WILLIAM E. HUNT, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 12th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 13th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff William Hunt's compensatory damages were determined by the Jury to be Forty-One Thousand Dollars ($41,000.00). The Court does hereby further find that the Plaintiff William Hunt had negotiaged settlements in his case totalling Twenty-Five Thousand Two Hundred Twenty-Five Dollars ($25,225.00) prior to said verdict. The Court does in addition find that One Thousand Seven Hundred Twenty-Five Dollars ($1,725.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the Forty-One Thousand Dollars ($41,000.00)

compensatory verdict shall be Twenty-Three Thousand Five Hundred Dollars ($23,500.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendants against whom Plaintiff was awarded a verdict both jointly and severally was the Defendants Owens-Corning Fiberglas Corporation and Keene Corporation. The Defendants Owens-Corning Fiberglas and Keene Corporation is therefore ORDERED to pay unto the Plaintiff both jointly and severally the sum of Seventeen Thousand Five Hundred Dollars ($17,500.00) plus interest thereon from the date of the jury verdict on November 13, 1990, until paid. In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the Plaintiff the sum of Two

Hundred Fifty Thousand Dollars ($250,000.00) as punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Two Hundred Sixty-Seven Thousand Five Hundred Dollars ($267,500.00) prior to perfecting any appeal in this matter, plus an additional amount of $26,750.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Seventeen Thousand Five Hundred Dollars ($17,500.00) prior to perfecting any appeal in this matter, plus an additional amount of $1,750.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 12th day of March, 1991.

/s/ROBERT B. STONE
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-833

FRANK MANO, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 12th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 13th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff Frank Mano's compensatory damages were determined by the Jury to be Thirty-One Thousand Dollars ($31,000.00). The Court does hereby further find that the Plaintiff Frank Mano had negotiaged settlements in his case totalling Twenty-Five Thousand One Hundred Seventy-Five Dollars ($27,175.00) prior to said verdict. The Court does in addition find that One Thousand Seven Hundred Twenty-Five Dollars ($1,725.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the Thirty-One Thousand Dollars

($31,000.00) compensatory verdict shall be Twenty-Three Thousand Four Hundred Fifty Dollars ($23,450.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendant whom Plaintiff went to verdict against was the Defendant Owens-Corning Fiberglas Corporation. The Defendant Owens-Corning Fiberglas is therefore ORDERED to pay unto the Plaintiff the sum of Seven Thousand Five Hundred Fifty Dollars ($7,550.00) plus interest thereon from the date of the jury verdict on November 13, 1990, until paid. In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the Plaintiff the sum of Two Hundred Fifty Thousand Dollars ($250,000.00) as punitive and exemplary damages. Such punitive and exemplary

damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Two Hundred Fifty-Seven Thousand Five Hundred Fifty Dollars ($257,550.00) prior to perfecting any appeal in this matter, plus an additional amount of $25,755.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not

extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 12th day of March, 1991.

/s/ROBERT B. STONE
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning
Fiberglas Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-832

GARY L. MCCORMICK,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 12th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 13th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff Gary L. McCormick's compensatory damages were determined by the Jury to be Thirty-Two Thousand Dollars ($32,000.00). The Court does hereby further find that the Plaintiff Gary L. McCormick had negotiaged settlements in his case totalling Twenty-Five Thousand One Hundred Seventy-Five Dollars ($25,175.00) prior to said verdict. The Court does in addition find that Two Thousand Eight Hundred Seventy-Five Dollars ($2,875.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the Thirty-Two

Thousand Dollars ($32,000.00) compensatory verdict shall be Twenty-Two Thousand Three Hundred Dollars ($22,300.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendants against whom Plaintiff was awarded a verdict both jointly and severally was the Defendants Owens-Corning Fiberglas Corporation and Keene Corporation. The Defendants Owens-Corning Fiberglas and Keene Corporation is therefore CRDERED to pay unto the Plaintiff both jointly and severally the sum of Nine Thousand Seven Hundred Dollars ($9,700.00) plus interest thereon from the date of the jury verdict on November 13, 1990, until paid. In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered

to pay the Plaintiff the sum of Two Hundred Fifty Thousand Dollars ($250,000.00) as punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Two Hundred Fifty-Nine Thousand Seven Hundred Dollars ($259,700.00) prior to perfecting any appeal in this matter, plus an additional amount of $25,970.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Nine Thousand Seven Hundred Dollars ($9,700.00) prior to perfecting any

appeal in this matter, plus an additional amount of $970.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 12th day of March, 1991.

/s/ROBERT B. STONE
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-781

PERRY D. MOORE,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 12th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 13th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff Perry D. Moore's compensatory damages were determined by the Jury to be Forty-Eight Thousand Dollars ($48,000.00). The Court does hereby further find that the Plaintiff Perry D. Moore had negotiaged settlements in his case totalling Twenty-Five Thousand Three Hundred Twenty-Five Dollars ($25,325.00) prior to said verdict. The Court does in addition find that One Thousand Seven Hundred Twenty-Five Dollars ($1,725.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the

Forty-Eight Thousand Dollars ($48,000.00) compensatory verdict shall be Twenty-Three Thousand Six Hundred Dollars ($23,600.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendant against whom Plaintiff was awarded a verdict was the Defendant Owens-Corning Fiberglas Corporation. The Defendant Owens-Corning Fiberglas is therefore ORDERED to pay unto the Plaintiff the sum of Twenty-Four Thousand Four Hundred Dollars ($24,400.00) plus interest thereon from the date of the jury verdict on November 13, 1990, until paid. In addition to the jury's verdict on the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the Plaintiff the sum of Two Hundred Fifty Thousand Dollars

($250,000.00) as punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Two Hundred Seventy-Four Thousand Four Hundred Dollars ($274,400.00) prior to perfecting any appeal in this matter, plus an additional amount of $27,440.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury

verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 12th day of March, 1991.

/s/ROBERT B. STONE
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning
Fiberglas Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-832

LARRY NEIDERT, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 12th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 13th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff Larry Neidert's compensatory damages were determined by the Jury to be Thirty-Seven Thousand Dollars ($37,000.00). The Court does hereby further find that the Plaintiff Larry Neidert had negotiaged settlements in his case totalling Twenty-Five Thousand Six Hundred Twenty-Five Dollars ($25,625.00) prior to said verdict. The Court does in addition find that Two Thousand Eight Hundred Seventy-Five Dollars ($2,825.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the Thirty-Seven Thousand

Dollars ($37,000.00) compensatory verdict shall be Twenty-Two Thousand Seven Hundred Fifty Dollars ($22,750.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendant against whom Plaintiff was awarded a verdict was the Defendant Owens-Corning Fiberglas Corporation. The Defendant Owens-Corning Fiberglas is therefore ORDERED to pay unto the Plaintiff the sum of Fourteen Thousand Two Hundred Fifty Dollars ($14,250.00) plus interest thereon from the date of the jury verdict on November 13, 1990, until paid. In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the Plaintiff the sum of Two Hundred Fifty Thousand Dollars

($250,000.00) as punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Two Hundred Sixty-Four Thousand Two Hundred Fifty Dollars ($264,250.00) prior to perfecting any appeal in this matter, plus an additional amount of $26,425.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury

verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 12th day of March, 1991.

/s/ROBERT B. STONE
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning
Fiberglas Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-832

ANTHONY SCOTKA, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 12th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 13th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff Anthony Scotka's compensatory damages were determined by the Jury to be Seventy Thousand Dollars ($70,000.00). The Court does hereby further find that the Plaintiff Anthony Scotka had negotiaged settlements in his case totalling Twenty-Five Thousand Three Hundred Dollars ($25,300.00) prior to said verdict.

The only defendants against whom Plaintiff was awarded a verdict both jointly and severally was the Defendants Owens-Corning Fiberglas Corporation and Keene Corporation. The Defendants Owens-Corning Fiberglas and Keene Corporation is therefore ORDERED to pay unto the Plaintiff both jointly and severally the sum of Fourty-Four Thousand Seven Hundred

Dollars ($44,700.00) plus interest thereon from the date of the jury verdict on November 13, 1990, until paid. In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the Plaintiff the sum of Two Hundred Fifty Thousand Dollars ($250,000.00) as punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Two Hundred Ninety-Four Thousand Seven Hundred Dollars ($294,700.00) prior to perfecting any

appeal in this matter, plus an additional amount of $29,470.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Fourty-Four Thousand Seven Hundred Dollars ($44,700.00) prior to perfecting any appeal in this matter, plus an additional amount of $4,470.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbes-

tos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 12th day of March, 1991.

/s/ROBERT B. STONE
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-782

BENJAMIN P. SISLER, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 12th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 13th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby find that the compensatory damages awarded to the plaintiff of Twenty-Two Thousand Dollars ($22,000.00) have been fully satisfied as a result of pre-trial settlements.

The Court does hereby HOLD and ORDER that the Defendant Owens-Corning Fiberglas shall pay no monies to the plaintiff as compensatory damages. However, pursuant to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the plaintiff the sum of Two Hundred Fifty Thousand Dollars ($250,000.00) as punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of

interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Two Hundred Fifty Thousand Dollars ($250,000.00) prior to perfecting any appeal in this matter, plus an additional amount of $25,000.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has

specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 12th day of March, 1991.

/s/ROBERT B. STONE
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning
Fiberglas Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-781

ROBERT S. THORNE, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 12th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 13th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff Robert Thorne's compensatory damages were determined by the Jury to be Sixty Thousand Dollars ($60,000.00). The Court does hereby further find that the Plaintiff Robert Thorne had negotiaged settlements in his case totalling Twenty-Five Thousand Two Hundred Seventy-Five Dollars ($25,275.00) prior to said verdict. The Court does in addition find that Two Thousand Eight Hundred Seventy-Five Dollars ($2,875.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the Sixty Thousand Dollars ($60,000.00)

compensatory verdict shall be Twenty-Two Thousand Four Hundred Dollars ($22,400.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendant against whom Plaintiff was awarded a verdict was the Defendant Owens-Corning Fiberglas Corporation. The Defendant Owens-Corning Fiberglas is therefore ORDERED to pay unto the Plaintiff the sum of Thirty-Seven Thousand Six Hundred Dollars ($37,600.00) plus interest thereon from the date of the jury verdict on November 13, 1990, until paid. In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to pay the Plaintiff the sum of Two Hundred Fifty Thousand Dollars ($250,000.00) as punitive and exemplary damages. Such

punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Two Hundred-Eighty-Seven Thousand Six Hundred Dollars ($287,600.00) prior to perfecting any appeal in this matter, plus an additional amount of $28,760.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment

pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 12th day of March, 1991.

/s/ROBERT B. STONE
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning
Fiberglas Corporation

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

CIVIL ACTION NO.: 86-C-832

ARTHUR E. TIMBERLAKE, et al.,

Plaintiff,

v.

ARMSTRONG WORLD INDUSTRIES, INC., et al.

Defendants.

JUDGMENT ORDER

BE IT REMEMBERED that on the 12th day of March, 1991, came the parties, by counsel, and did argue their motions for judgments notwithstanding the verdicts and for new trial based upon the verdicts entered against them by a petit jury of this Court on the 13th day of November, 1990.

The Court having maturely considered the same, does hereby HOLD and ORDER that all motions for judgments notwithstanding

the verdict and for new trials are hereby denied.

The Court does hereby further HOLD and ORDER that Plaintiff Arthur E. Timberlake's compensatory damages were determined by the Jury to be Fifty-two Thousand Dollars ($52,000.00). The Court does hereby further find that the Plaintiff Arthur E. Timberlake had negotiaged settlements in his case totalling Twenty-Five Thousand Two Hundred Twenty-Five Dollars ($25,225.00) prior to said verdict. The Court does in addition find that One Thousand Seven Hundred Twenty-Five Dollars ($1,725.00) of these negotiated settlements is based upon a contingent and deferred payment and should therefore not be set off from the judgment at this time. The Court does hereby HOLD and ORDER that the appropriate amount of set-offs from the Fifty-Two

Thousand Dollars ($52,000.00) compensatory verdict shall be Twenty-Three Thousand Five Hundred Dollars ($23,500.00). Plaintiff shall assign rights to contingent and deferred payments to Defendants.

The only defendants against whom Plaintiff was awarded a verdict both jointly and severally was the Defendants Owens-Corning Fiberglas Corporation and Keene Corporation. The Defendants Owens-Corning Fiberglas and Keene Corporation is therefore ORDERED to pay unto the Plaintiff both jointly and severally the sum of Twenty-Eight Thousand Five Hundred Dollars ($28,500.00) plus interest thereon from the date of the jury verdict on November 13, 1990, until paid. In addition to the jury's verdict in the above-styled action, the Defendant Owens-Corning Fiberglas Corporation is ordered to

pay the Plaintiff the sum of Two Hundred Fifty Thousand Dollars ($250,000.00) as punitive and exemplary damages. Such punitive and exemplary damage awards shall in addition thereto include interest as of the date of the jury verdict at the legal rate of interest until such time as said judgments are paid.

Owens-Corning Fiberglas Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Two Hundred Seventy-Eight Thousand Five Hundred Dollars ($278,500.00) prior to perfecting any appeal in this matter, plus an additional amount of $27,850.00 dollars.

Keene Corporation is hereby ORDERED to forthwith obtain a bond in the sum of Twenty-Eight Thousand Eight Hundred Fifty Dollars ($28,500.00) prior to perfecting

any appeal in this matter, plus an additional amount of $2,850.00 dollars.

This Court previously having ruled that the cases listed herein did not involve claims for risk of subsequently developing cancer, but rather were claims for asbestos pleural disease and parenchymal asbestosis, including fear of cancer, it is Ordered that the jury verdict and subsequent entry of judgment pursuant to said verdict does not extinguish any rights should the plaintiff subsequently develop an asbestos-related malignancy. The Court has specifically ruled that claims for asbestos-related malignancies constitute separate causes of actions from claims for asbestos pleural disease and parenchymal asbestosis and fear of cancer.

Costs are taxed against non-prevailing Defendants.

The Defendants object and except to all adverse rulings of the Court.

ENTERED under my hand this 12th day of March, 1991.

/s/ROBERT B. STONE
JUDGE

APPROVED AS TO FORM ONLY:

/s/ illegible
Counsel for Plaintiff

Counsel for Owens-Corning Fiberglas Corporation

Counsel for Keene Corporation

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 5th day of February, 1992, the following order was made and entered:

Leonard Adams, Garlen Burton, George Campbell, Leslie Carr, John Chapman, Arville Dalton, James Darrah, Paul Dunn, Terry England, William Gabbert, George Hoschar, Everett Johnson, James Kirk, William Kittle, Foster Lipscomb, Nelson Lott, George Mahalic, Jeryl Root, Stanley Rowe, Joseph Sberna and Joseph Shilot, Plaintiffs Below, Respondents

vs. No. 920023

Owens-Corning Fiberglas Corporation, Defendant Below, Petitioner

AND

Charles Barnes, Allen Campbell, Gary Fitzsimmons, George Frazier, Terrance Harrah, William Heaberlin, William Hunt, Gary McCormick, Frank Mano, Perry Moore, Larry Neidert, Anthony Scotka, Benjamin Sisler, Robert Thorne and Arthur Timberlake, Plaintiffs Below, Respondents

vs.

Owens-Corning Fiberglas Corporation, Defendant Below, Petitioner

On a former day, to-wit, January 9, 1992, came the petitioner, Owens-Corning

Fiberglas Corporation, by Riley & DeFalice, Patrick R. Riley, Patrick A. Hewitt and Fredric E. Orlansky, its attorneys, and presented to the Court its petition praying for an appeal from judgments of the Circuit Court of Monongalia County, rendered on the 11th day of March, 1991, with the record therein accompanying the petition. Thereafter, on the 15th day of January, 1992, came the petitioner, Owens-Corning Fiberglas Corporation, by Riley & DeFalice, Patrick R. Riley, Patrick A. Hewitt and Fredric E. Orlansky, its attorneys, and presented to the Court its supplement thereto. Finally, on the 23rd day of January, 1992, came the respondents, Leonard Adams, Garlen Burton, George Campbell, Leslie Carr, John Chapman, Arville Dalton, James Darrah, Paul Dunn, Terry England, William

Gabbert, George Hoschar, Everett Johnson, James Kirk, William Kittle, Foster Lipscomb, Nelson Lott, George Mahalic, Jeryl Root, Stanley Rowe, Joseph Sberna and Joseph Shilot, Charles Barnes, Allen Campbell, Gary Fitzsimmons, George Frazier, Terrance Harrah, William Heaberlin, William Hunt, Gary McCormick, Frank Mano, Perry Moore, Larry Neidert, Anthony Scotka, Benjamin Sisler, Robert Thorne and Arthur Timberlake, by Hostler & Segal, and Scott Segal, and Henderson & Goldberg, Theodore Goldberg and Tybe A. Brett, their attorneys, and presented to the Court their written response in opposition thereto.

Upon consideration whereof, the Court is of opinion to and doth hereby refuse said petition for appeal.

A True Copy

Attest: /s/ illegible
Clerk, Supreme Court of Appeals

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 21st day of July, 1992, the following order was made and entered:

Leonard Adams, et al., Plaintiffs Below, Respondents

vs. No. 912484

Keene Corporation, et al., Defendants Below

Keene Corporation, Defendant Below, Petitioner

On a former day to-wit, March 6, 1992, came the Owens-Corning Fiberglas Corporation, by Riley & DeFalice, Patrick R. Riley, Patrick A. Hewitt and Fredric E. Orlansky, its attorneys, and presented to the Court its motion in writing for leave for joiner in the above-captioned proceeding as petitioner and further presented to the Court its petition praying for an appeal from a judgment of

the Circuit Court of Monongalia County, rendered on the 11th day of March, 1991.

Upon consideration whereof, the Court is of opinion to and doth hereby grant said motion for joiner and Owens-Corning Fiberglas Corporation is hereby made a party petitioner to this proceeding with leave to demur, answer, or otherwise plead herein. Upon further consideration, the Court is of opinion to and doth hereby refuse said petition for appeal.

A True Copy

Attest: /s/ illegible
Clerk, Supreme Court of Appeals

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WASHINGTON, D.C. 20543

FILED
NOV 20 1992
OFFICE OF THE CLERK

No. 92-844

In The

Supreme Court of the United States

October Term, 1992

OWENS-CORNING FIBERGLAS CORPORATION,

Petitioner,

v.

LEONARD ADAMS, et al.,

Respondents.

Petition For A Writ Of Certiorari To The Circuit Court of Monongalia County, West Virginia

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

TYBE A. BRETT*
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QUESTIONS PRESENTED

1. Should a defendant be permitted to challenge an award of punitive damages on grounds that it allegedly violated the Due Process Clause of the Fourteenth Amendment when:

(a) the defendant was offered, but declined, the opportunity to present all relevant evidence;

(b) the defendant filed objections and exceptions to the courts' charge to the jury, but the objections and exceptions raised no constitutional issues and did not offer more specific instructions to address the purported constitutional infirmity;

(c) the defendant does not challenge on appeal the sufficiency of the evidence on punitive damages;

(d) the post-trial oral argument and the trial court rulings from the bench addressed the defendant's contentions, a procedure defendant tries to hide from this Court by failing to order a transcript of the argument; and,

(e) the defendant appealed to the state's highest appellate court, which heard and rejected the arguments after briefing and oral argument.

2. Should a defendant be permitted to raise the issue of whether multiple punitive damage awards exceed the amount necessary for deterrence and punishment when:

QUESTIONS PRESENTED – Continued

(a) the evidence of egregious conduct was sufficient to submit the issue of punitive damages to the jury;

(b) the defendant was offered, but declined, the opportunity to present relevant evidence on this issue;

(c) there was no evidence of record as to the defendant's financial position, the number of victims of its asbestos products, or the amount of any punitive awards actually paid by it for asbestos-related personal injuries; and,

(d) such awards are permitted by state law under the facts presented.

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RULES INVOLVED

West Virginia Rules of Appellate Procedure 3, 4, 4A, 5 and 7 are reprinted in the Respondents' Appendix at 1.

STATEMENT OF THE CASE

This Petition is yet another attempt by an asbestos defendant to have this Court reverse a punitive damages award properly imposed under applicable state law, after availing itself of all procedural protections at a full trial of the merits of its liability to victims of its defective products. The trial court record, as it actually is and not as rewritten by Petitioner Owens-Corning Fiberglas Corporation ("OCF"), amply supports the imposition of punitive damages and leads to the simple conclusion that Petitioner received all the process that was due. Indeed, this Court recently denied a Petition for a Writ of Certiorari by another defendant in the same trial raising the same issues as those raised herein. *Keene Corp. v. Adams*, 61 U.S.L.W. 3352 (U.S. Nov. 9, 1992) (No. 92-359).

As described in the Petition, Respondents brought these cases against the manufacturers and sellers of the asbestos products that caused their personal injury. Thirty-nine (39) cases were consolidated into two groups for trial: the Adams group was tried before Judge Larry V. Starcher, and the Barnes group was tried before Judge Robert V. Stone.

As stated in the Petition, OCF distributed asbestos-containing Kaylo from the early 1950s. In 1958, OCF purchased the manufacturing facilities for Kaylo, and manufactured and sold the product through at least 1972.

Respondents submitted evidence to show that the distribution and sale of Kaylo continued after production ceased. At trial, there was overwhelming evidence justifying the submission of punitive damages to the jury. An internal memorandum dated January 7, 1942 established OCF's knowledge of the medical literature discussing the lung and skin hazards of asbestos. (Pl. Exhibits 3 and 4). In a letter dated August 29, 1945, OCF recognized that asbestos is "the only silicate that has been determined by lung pathologists to involve a lung hazard." (Pl. Exhibit 503). A report dated February 7, 1952 by the Saranac Laboratory and received by OCF stated, "every precaution should be taken to protect workers against inhaling the dust [created by Kaylo]." (Pl. Exhibits 32 and 33). Four years later Dr. Gerrit Schepers, director of the Saranac Laboratory, again informed OCF that asbestos causes cancer and asbestosis. (Pl. Exhibits 501 and 502).

An internal memorandum dated September 17, 1963 stated: "Asbestos (as found in Kaylo) when breathed into the lungs causes asbestosis which often leads to lung cancer." (Pl. Exhibit 5). OCF's knowledge is also established in documents dated 1965 and 1966. (Pl. Exhibits 8 and 9).

By 1966, one OCF official recognized that Kaylo should bear a warning label. (Pl. Exhibit 12). Nonetheless, subsequent documents revealed OCF's "low gear" program to replace asbestos and commitment "to delay this requirement [of a warning label on Kaylo] as long as possible." (Pl. Exhibits 13 and 21). Further, in October of 1973, OCF was still selling its inventory of asbestos-laden Kaylo at bargain rates, even though it had ceased manufacturing the product. (Pl. Exhibit 25).

Dr. Schepers, who studied OCF's Kaylo product at the Saranac Laboratory, testified for a full day concerning the unequivocal information he provided to OCF in 1955-1956 concerning the risk of cancer and lung scarring posed by its asbestos product to employees as well as users of asbestos in the construction trades. (Trial Transcript, Oct. 22, 1990, Vol. IV, pp. 641-54).

OCF correctly points out that the trial courts granted directed verdicts in favor of the defendants in three cases, and the remaining 36 cases went to the jury. Based on the substantial, indeed overwhelming evidence of OCF's actual knowledge of the hazards of asbestos and refusal to warn of those hazards, the trial courts submitted the issue of punitive damages to the jury.

The Petition at 6-7 accurately states the courts' charge on punitive damages. This charge clearly articulates the purpose of punitive damages and the standard of conduct warranting punitive damages. Also, the courts clearly charged that punitives may be awarded only if compensatory damages are awarded and clearly stated that the award of punitives was not obligatory.

Significantly, OCF's Statement of the Case does not discuss OCF's offer of different or more specific instructions. In fact, OCF did file Objections and Exceptions to Judge's Charge to Jury on or about November 19, 1990. (Respondents' Appendix at 9). The sole issue regarding punitive damages preserved in these objections was whether such damages are available against a product manufacturer that introduces some evidence of a warning. The issue of whether OCF warned was hotly contested, and even OCF's evidence showed at best that it

first applied a warning label in December 1966, long after OCF knew of the dangers of its products. OCF did not raise at the trial level the constitutional objections it now advances. Additionally, any argument that Respondents submitted insufficient evidence of punitive damages has been abandoned in the Petition before this Court.

The Petition is also interesting in that OCF argues that in ruling on motions for a directed verdict on punitive damages, the courts' reasons for denying defendants' motions focused solely on the evidence relating to defendants' conduct. That focus was entirely proper given that evidence of defendants' conduct was the only evidence relevant to punitive damages before the trial court, that the evidence of warnings was the only issue that OCF preserved in its objection to the charge, and the complete absence of any evidence from which a fact finder could assess whether any or all punitive damage awards were paid and constituted sufficient deterrence. Even if OCF had "informed the courts that it had been subjected to previous awards of punitive damages," (Petition at 13), OCF never indicates that the trial courts refused to permit OCF to introduce evidence of prior punitive damage awards to be considered in limitation of or mitigation of punitive damages in these cases. OCF even failed to offer evidence post-trial, instead providing "information," thus insuring the trial courts' inability to consider it. In the absence of such evidence, there was, of course, nothing for the jury, the trial courts or the appellate court to consider.

Based on the evidence, the juries in each courtroom awarded compensatory damages to each plaintiff ranging in amounts from $15,000 to $324,000. The two juries

awarded total compensatory damages of $1,846,040 and total punitive damages against OCF of $4,380,000. The jury in Judge Starcher's courtroom awarded punitive damages against Keene Corporation, the other defendant that went to verdict, in an amount of $5,000 per plaintiff. *See* Response to Petition for a Writ of Certiorari at 3-4, *Keene Corp. v. Adams*, No. 92-359 (U.S.). In all of the cases, the compensatory damage awards were substantially reduced by offsets due to plaintiffs' settlements with other defendants, and in nine (9) cases OCF was not required to pay any compensatory damages at all due to offsets.

In light of the feeble record created by OCF at trial despite every opportunity to admit any relevant, admissible evidence, the trial courts simply might have dismissed OCF's belated attempts to reverse the punitive damage awards based on vague constitutional notions unsupported by any evidence. However, the trial courts did not do so. On February 27, 1991, they conducted a hearing on defendants' post-trial motions, and rendered a decision from the bench on each issue raised. The decisions of the trial court do not appear in the printed record ordered by OCF. One can only speculate that OCF never requested a transcript because the trial courts' findings were inconsistent with OCF's contentions.

Thereafter, the trial courts entered judgments in all cases on March 12, 1991. OCF exercised its right to petition to the West Virginia Supreme Court and filed a lengthy petition for appeal on October 30, 1991.[1] On or

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[1] Under W. Va. R. App. P. 3, the period of time for filing a petition for appeal is four months. However, the parties agreed to extend the period to November 1, 1991.

about January 15, 1992, OCF filed a supplement to its petition. In this procedure, OCF had the right to designate any portions of the record relevant to its petition. Respondents filed a brief in opposition. Pursuant to W. Va. R. App. P. 5, OCF as Petitioner, but not Respondents, had an opportunity to present oral argument on the petition. (Respondents' Appendix at 6). Given the lack of a record, it is not surprising that, after oral presentation, the West Virginia Supreme Court of Appeals refused the petition for appeal by Order dated February 5, 1992.

Despite the fact that the period for filing a petition for appeal had expired on November 1, 1991, OCF filed a notice of renewal of its petition for appeal. Pursuant to W. Va. R. App. P. 7, such notice may only be filed within the period of time for filing the original petition. Despite the fact that this notice was out of time, the West Virginia Supreme Court entertained the renewal and on July 21, 1992, refused the petition for appeal.[2] OCF's Petition for a Writ of Certiorari followed.

In short, OCF waived its right to challenge the constitutionality of punitive damages. In the Petition before this Court, OCF does not point to one shred of evidence that it offered to demonstrate that the punitive damages were excessive; OCF never even attempted to present evidence of its net worth or the total amount of satisfied punitive damage awards against it, or of the ratio

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[2] Given that the notice of renewal was untimely, the July 21, 1992 Order was a nullity. OCF should have petitioned for a Writ of Certiorari within 90 days of the February 5, 1992 Order, and having failed to do so, this Court may dismiss OCF's Petition as untimely.

between its net worth and satisfied punitive damage awards. In short, OCF presented no evidence that it had been punished enough.

REASONS FOR DENYING THE WRIT

SUMMARY OF ARGUMENT

OCF's Petition for a Writ of Certiorari presents no issue reviewable by this Court. OCF contends that the award of punitive damages offends due process. However, the awards are low compared to others upheld by courts under identical circumstances. Further, the evidence was sufficient to submit the issue of punitive damages to the jury, the trial courts did not refuse OCF the opportunity to introduce additional evidence in mitigation of punitives, and OCF did not object to the charge to the jury on the grounds now asserted nor did it offer more specific instructions on the constitutional issues.

Moreover, punitive damages are governed by state law. The awards of punitive damages against OCF comport with principles of applicable West Virginia law, and any challenge to the awards on substantive grounds must be rejected.

I. The Petition Presents No Basis Upon Which This Court Can Conclude That The Punitive Damages Assessed Against Petitioner Violated Due Process.

In *Pacific Mutual Life Ins. Co. v. Haslip*, 111 S. Ct. 1032, 1041 (1991), this Court reaffirmed the longstanding principle that punitive damages are a part of traditional state

tort law. *See also Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 255 (1984). OCF recognizes this principle and indeed, except for its discussion of *Haslip* and footnote 4, the entire Petition discusses West Virginia case law.

These cases were tried in West Virginia courts that applied West Virginia law. The West Virginia Supreme Court recently examined its own law regarding punitive damages in *Fleming Landfill v. Garnes*, 186 W. Va. 656, 413 S.E.2d 897 (1991), on remand from *Fleming Landfill v. Garnes*, 111 S. Ct. 2882 (1991),[3] and in *Davis v. Celotex Corp.*, 420 S.E.2d 557 (W. Va. 1992), an asbestos case tried before one of the judges who presided below. Under the pertinent principles expressed in those cases, OCF has failed to present any basis upon which this Court can conclude that the punitive damages assessed against it by the juries in these cases violates due process.

In *Garnes*, the West Virginia Supreme Court advanced the three general criteria for awards of punitive damages expressed by this Court in *Haslip*:

> (1) a reasonable constraint on the jury's discretion; (2) a meaningful and adequate review of the award by the trial court using established procedures; and (3) a meaningful and adequate review by the appellate court.

Garnes, 413 S.E.2d at 907. All these criteria were satisfied.

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[3] The only part of previous West Virginia law expressly overruled in *Garnes* was the part of *Wells v. Smith*, 171 W. Va. 97, 297 S.E.2d 872 (1982), that stands for the proposition that a jury may award punitive damages without finding any compensatories. *Garnes*, 413 S.E.2d at 908. Contrary to the statement in the Petition at 29, *Garnes* did not find the entire system for awarding punitive damages unconstitutional.

With respect to constraint on the jury's discretion, the jury should consider those factors for which it has all of the information necessary to use those factors properly. *Garnes*, 413 S.E.2d at 909. In *Garnes*, the court reversed an award of punitive damages because, in sharp contrast to these cases, the jury awarded substantial punitive damages, but not compensatory damages.

Here, the only evidence before the jury relevant to punitive damages was the evidence of OCF's wrongdoing. The instructions to the jury described the purposes of punitive damages (to punish and deter) and the standard of conduct required for an award of punitive damages (gross fraud, malice, oppression, or wanton, willful or reckless misconduct or criminal indifference to civil obligations affecting the rights of others). OCF does not contend in its Petition that the evidence of egregious conduct was insufficient to submit the issue of punitive damages to the jury, and indeed other appellate courts have ruled similar evidence concerning OCF's wrongdoing sufficient to submit the issue of punitive damages to the jury. *Dunn v. Owens-Corning Fiberglas Corp.*, 774 F. Supp. 929 (D.V.I. 1991), *aff'd in part and vacated in part sub nom., Dunn v. HOVIC*, 1992 W.L. 228875 (Sept. 18, 1992), *rehearing granted and opinion vacated*, 1992 W.L. 274786 (3d Cir. Oct. 8, 1992); *Owens-Corning Fiberglas Corp. v. Watson*, 243 Va. 128, 413 S.E.2d 630 (1992).

The charge to the jury did not instruct the jury to consider other factors, such as the profitability of the defendant's conduct and the financial position of the defendant, for one simple reason: OCF fails to point to any evidence of these other factors or its request for a specific charge of other factors.

Indeed, the instructions given below were not significantly different from the one approved by this Court in *Haslip*. The record, far from showing that the jury "ran wild," demonstrates that the juries were capable of accommodating the parties' interest in rational decision-making and the state's interest in meaningful, individualized assessment. The compensatory damages ranged widely, obviously reflecting the varying degrees of injury suffered by each plaintiff, and the punitive damages differentiated between the egregiousness of OCF's conduct – which the evidence showed considered but failed to place warnings on products of which it had actual knowledge of the hazards – and that of the other defendant who went to verdict.

The fact that the two juries awarded punitive damages in different amounts is hardly a violation of due process. As recognized by Justice Kennedy: "Jury determination of punitive damages has such long and principled recognition as a central part of our system that no further evidence of its essential fairness or rationality ought to be deemed necessary." *Haslip*, 111 S. Ct. at 1055. Some inconsistency of jury results can be expected. However, nonuniformity cannot be equated with constitutional infirmity. "On the contrary, it is the jury's function to make the difficult and uniquely human judgments that defy codification and that 'buil[d] discretion, equity, and flexibility into a legal system.'" *Id.* (Kennedy, J., concurring) (quoting *McClesky v. Kemp*, 481 U.S. 279, 311, *reh'g denied*, 482 U.S. 920 (1987)). Indeed, this issue was recently raised in a Petition for a Writ of Certiorari, properly denied by this Court in *Owens-Illinois, Inc. v. Roby*, 61 U.S.L.W. 3334 (U.S. Nov. 2, 1992) (No. 92-423).

In short, there is nothing patently "wild" about a total of $4,380,000 in punitive damages awarded to 36 plaintiffs when the aggregate compensatory damages were $1,846,040, resulting in less than a 2.4:1 ratio. In *Glasscock v. Armstrong Cork Co.*, 946 F.2d 1085 (5th Cir. 1991), *cert. denied sub nom., Celotex Corp. v. Glasscock*, 112 S. Ct. 1778 (1992), this Court denied review of a $6.1 million punitive damage award to eleven (11) asbestos plaintiffs, who were awarded total compensatory damages of $2,590,000. In other contexts, this Court has upheld ratios of punitive damages to compensatories more disparate than the ratio presented here. *See, e.g., Haslip* (punitive damages more than four times the compensatory damages); *Browning-Ferris Indus. of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257 (1989) (punitive damages over one hundred times the compensatory damages); *Silkwood* (punitive damages twenty times the compensatory damages).

OCF's failure to present relevant evidence and to preserve the issues it now raises in its Objections and Exceptions to Judge's Charge to Jury, cannot be rectified in this Court. *See Simpson v. Pittsburgh Corning Corp.*, 901 F.2d 277, 280-82 (2d Cir.), *cert. dismissed sub nom. Pittsburgh Corning Corp. v. Simpson*, 111 S. Ct. 27 (1990); *Dunn v. Owens-Corning Fiberglas*, 774 F. Supp. at 946. This Court has properly refused to entertain objections to punitive damage awards based on vague appeals to constitutional principles. *See, e.g., Bankers Life and Casualty Co. v. Crenshaw*, 486 U.S. 71 (1988).

The Petition fails to specify the evidence relevant to the constitutional issues that was excluded or the erroneous ruling on its exception to the constitutionality of the instruction, contrary to Supreme Court Rule 14.1(h):

> If review of a judgment of a state court is sought, the statement of the case shall also specify the stage in the proceedings, both in the court of first instance and in the appellate courts, at which the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed upon by those courts; and such pertinent quotation of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears (e.g., ruling on exception, portion of court's charge and exception thereto, assignment of errors) as will show that the federal question was timely and properly raised so as to give this Court jurisdiction to review the judgment on a writ of certiorari. When the portions of the record relied upon under this subparagraph are voluminous, they shall be included in the appendix referred to in subparagraph .1(k) of this Rule.

OCF's Statement of the Case fails to specify how it raised the constitutional issues at trial for a simple reason: it did not do so. Thus, this Court should deny the Petition under Rule 14.5.

OCF has also failed to show that the post-trial review by the trial courts offended due process. OCF omits from its discussion of post-trial review any mention of a hearing at which the courts rendered a decision from the

bench on OCF's post-trial motions. The reason the decision on the record appears "cursory" is simple: a court reporter was present at the hearing, but OCF never ordered the transcript and has failed to include it in the record before this Court.

With respect to appellate review, OCF's argument boils down to a single complaint: the West Virginia Supreme Court did not render a written decision on its Petition for Appeal to that court. OCF itself recognizes the reason: the West Virginia Supreme Court, like this Court, does not accept an appeal if the alleged error was not preserved below. (Petition at 36 [citing *Pote v. Jarrell*, 186 W. Va. 369, 412 S.E. 2d 770, 777 (1991)]).[4]

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[4] This Court has repeatedly recognized in the criminal context that due process does not establish an absolute right to an appeal in the state court system. *See, e.g., United States v. MacCollom*, 426 U.S. 317, 323 (1976) (citing *Griffin v. Illinois*, 351 U.S. 12, 18 (1956)). *See also Pennsylvania v. Finley*, 481 U.S. 551, 557-58 (1987); *Billotti v. Legursky*, 975 F.2d 113 (4th Cir. 1992) (reviewing West Virginia appellate procedures). Certainly, due process is not implicated in the civil context when the complaining party had every opportunity to present relevant evidence and to build and preserve a record, and in fact does receive review by the appellate court, which simply found no basis to render a written decision setting forth its reasons for refusing OCF's petition.

OCF cites a number of cases for the proposition that "the demands of due process require that the reasons for a decision be explained in certain circumstances." (Petition at 40 n.6). Certainly, if there is no right to appeal, there is no right to a written decision on the merits by the appellate court. Further, the cases cited by OCF in fact hold that:

> there is no federal requirement that a state trial judge explain his reasons for acquitting a defendant in a state criminal trial; . . .

As stated in *Garnes*, a petition for review must address each and every factor to be given to the jury "with particularity, summarizing the evidence presented to the jury on the subject or to the trial court at the post-judgment review stage." Syl. Pt. 5, *Garnes*, 413 S.E.2d at 900. OCF's petition could not have summarized evidence it did not present, and that court wisely declined to review a case submitted on an inadequate record. The fact that OCF's petition to the West Virginia Supreme Court "addressed some of the factors made relevant by *Haslip* (and later by *Garnes*)" (Petition at 37) is no substitute for introducing relevant evidence at the trial court level.[5]

> . . . Federal judges have no general supervisory power over state trial judges; . . . .

Harris v. Rivera, 454 U.S. 339, 344-45 (1981). OCF cites two cases that require corrections officials to provide written explanations for their decisionmaking. *Wolff v. McDonnell*, 418 U.S. 539, 564-65 (1974) (written record of disciplinary action by corrections officials required to aid scrutiny by state officials, the public and the courts); *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972) (written statement by factfinders as to reasons for revoking parole). These cases are inapplicable to the instant cases where a complete record of the trial is available and OCF had the opportunity to create the record and submit any part of it for the consideration of the appellate court. OCF received all the process to which it was due.

[5] Further, even if the record adequately preserved the issue, OCF misstates the holding of *Pote v. Jarrell*, which explicitly does not require that every petition concerning punitive damages be accepted:

> Moreover, even where a punitive damage issue is adequately preserved, we may conclude in our review of the petition that the error was harmless and refuse the petition. We want to emphasize that merely

By OCF's own admission, it forewent the opportunity to present at trial any relevant evidence of the numbers of asbestos cases pending against it and any financial impact, but awaited its petition for appeal to the West Virginia Supreme Court and the Petition to this Court to present "data" (which is not even in the form of admissible evidence) that it wished the jury to consider in mitigation of punitive damages. An appellate court is not the proper forum for resolving factual disputes that could have been, but were not presented to the fact finder.

The West Virginia Supreme Court has properly rejected the role of a super fact finding body. In *Davis v. Celotex, supra,* an appeal to the West Virginia Supreme Court from an award of punitive damages against an asbestos defendant, the court concluded:

> In sum, we hold that in cases tried before *Garnes* in which punitive damages were awarded, we will not set aside such awards if there is a factual basis for the punitive damages, if the punitive damages bear a reasonable relationship to the compensatory damages, and if the parties' main assignment of error is that the trial court's instruction did not contain all of the factors enunciated in *Garnes*.

Davis, 420 S.E.2d at 567.

This Court should do likewise. The evidence of OCF's egregious conduct was substantial, and OCF had

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because error relating to a punitive damage award is asserted in the petition, that appeal will not automatically be granted on the punitive damage point alone.

Pote v. Jarrell, 412 S.E.2d at 777.

the opportunity, which it declined, to present all relevant evidence, to object to the jury instructions and to offer specific instructions to address any purported constitutional infirmity. The trial courts entertained motions and held a post-trial hearing on OCF's objections to the punitive damages award, but OCF failed to order a transcript of the hearing which specifically addressed OCF's contentions. Given the record, OCF presented no basis for the West Virginia Supreme Court to review the punitive damage awards. OCF, like other asbestos defendants who have petitioned this Court, had all the process to which it was due.

II. The Petition Presents No Basis Upon Which This Court Can Conclude That Multiple Punitive Damage Awards Exceed The Amount Necessary For Deterrence and Punishment.

OCF adopts the argument that multiple punitive damages violate due process as set forth in Owens-Illinois' Petition for A Writ of Certiorari in *Owens-Illinois, Inc. v. Bolyard*, 61 U.S.L.W. 3352 (U.S. Nov. 9, 1992) (No. 92-360). This Court denied Owens-Illinois' Petition and should do so here for the following reasons.

First, OCF presented no evidence to the trial courts that it was punished enough, and should not be permitted to do so here. OCF's assertion that it "informed the [West Virginia] Supreme Court of Appeals that 12 juries had returned punitive damages verdicts against OCF" does not substitute for the introduction of admissible evidence to the fact finder. Even if that information were true, it does not establish that OCF actually *paid* punitive

damages, or illustrate the financial implications of the information. OCF cannot expect this Court to simply accept as fact information presented out of context that has not been subjected to the rigors of cross-examination.

Further, the record is devoid of any indication that the jury had evidence of the full extent of OCF's wrongful conduct in failing to warn all users of the dangers of its asbestos products, and the jury was not instructed to award punitive damages as appropriate punishment for the totality of OCF's conduct. There was no showing that the wrongdoing sought to be punished in these cases is the same misconduct involved in other cases. In fact, there was no evidence at all relevant to multiple punitive damages. *Simpson*, 901 F.2d at 281. Without a full airing of these issues at the trial court level, there is nothing for this Court to review.

Second, punitive damage awards are governed by state law. The West Virginia Supreme Court has upheld the propriety of multiple punitive damages under precisely the same facts as are presented in this case. *Davis v. Celotex, supra*.

Third, in the criminal context, West Virginia has recognized that when a single act results in multiple deaths, Article III, Section 5 of the West Virginia Constitution permits multiple punishments, and criminal defendants may receive as many sentences as there were deaths. *State v. Fortner*, 182 W. Va. 345, 387 S.E.2d 812, 826 (1989); *State ex rel. Lehman v. Strickler*, 174 W. Va. 809, 329 S.E.2d 882 (1985); *State v. Myers*, 171 W. Va. 277, 298 S.E.2d 813 (1982). Certainly in the civil context, when a manufacturer's product causes death and injury to many people,

multiple punitive damage awards are proper. *See also Browning-Ferris Indus. of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. at 259-60 (Excessive Fines Clause of the Eighth Amendment does not apply to punitive damages awarded in civil cases between private parties); *United States v. Halper*, 490 U.S. 435, 450-51 (1989) (Double Jeopardy Clause of Fifth Amendment is not triggered by civil litigation between private parties).

Fourth, this argument repeatedly has been raised in asbestos cases appealed to this Court, including an appeal by another defendant in these cases. *See Keene v. Adams, supra*. In every case, this Court properly declined review. *See, e.g., Glasscock v. Armstrong Cork Co., supra; King v. Armstrong World Indus., Inc.*, 906 F.2d 1022 (5th Cir. 1990), *cert. denied sub nom., Celotex Corp. v. King*, 111 S. Ct. 2236 (1991); *Simpson v. Pittsburgh Corning Corp., supra; Johnson v. Celotex Corp.*, 899 F.2d 1281 (2d Cir.), *cert. denied sub nom. Celotex Corp. v. Johnson*, 111 S. Ct. 297 (1990); *Jackson v. Johns-Manville Sales Corp.*, 781 F.2d 394 (5th Cir.), *cert. denied*, 478 U.S. 1022 (1986).

Fifth, to adopt OCF's position as a matter of law without a full record raises disturbing practical implications. If only a single punitive damage award is available against a manufacturer who mass produces and markets unsafe products, manufacturers could simply factor the cost of a single punitive damage award into the cost of doing business, completely eliminating the deterrent effect of punitive damages. *See Leonen v. Johns-Manville Corp.*, 717 F. Supp. 272, 283-84 (D.N.J. 1989).

Thus, to reverse the punitive damages in this case would require this Court to become a fact finding body

and to completely undermine the purposes of punitive damages under state law.

CONCLUSION

Having failed to avail itself of the opportunity at trial to present relevant, admissible evidence in mitigation of punitive damages, OCF now seeks to transform this Court into a fact finding body to consider for the first time OCF's "information." The evidence of OCF's wrongdoing was overwhelming, and the punitive damages awarded against OCF comport with applicable state law. OCF presents no basis for review of punitive damages, and this Court must deny OCF's Petition for a Writ of Certiorari.

Respectfully submitted,

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Dated: November 20, 1992

RULES OF APPELLATE PROCEDURE
WEST VIRGINIA SUPREME COURT OF APPEALS

Rule 3. Petition for Appeal. (a) *Time for Petition.* No petition shall be presented for an appeal from, or a writ of supersedeas to, any judgment, decree or order, which shall have been rendered more than four months before such petition is filed in the office of the clerk of the circuit court where the judgment, decree or order being appealed was entered, whether the State be a party thereto or not; provided, that the judge of the circuit court may for good cause shown, by order entered of record prior to the expiration of such period of four months, extend and re-extend such period, not to exceed a total extension of two months, if a request for the transcript was made by the party seeking an appeal or supersedeas within thirty days of the entry of such judgment, decree or order. In appeals from administrative agencies, the petition for appeal shall be filed within the applicable time provided by the statute.

(b) *Notice for Criminal Appeal.* No petition from a criminal case shall be presented unless a notice of intent to appeal shall have been filed with the clerk of the court in which the judgment or order was entered within thirty days from the entry of such judgment or order. The notice of intent to appeal shall concisely state the grounds for appeal.

(c) *Form of Petition.* The petition for appeal and note of argument under prior practice shall be integrated into one document called the petition. A petition for an appeal shall state the following in the order indicated:

1. The kind of proceeding and nature of the ruling in the lower tribunal.

2. A statement of facts of the case.

3. The assignments of error relied upon on appeal and the manner in which they were decided in the lower tribunal.

4. Points and authorities relied upon, a discussion of law, and the relief prayed for.

(d) *Joint or Consolidated Appeals.* If two or more persons are entitled to appeal from a judgment or order of a lower tribunal and their interests are such that joinder may properly be made, they may join in petitioning for an appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the Supreme Court upon its own motion, or upon motion of a party, or by stipulation of the parties to the several appeals.

(e) *Service of Petition.* The petition for appeal shall be served in accordance with Rule 15.

(f) *Response to Petition.* When the appeal is from a judgment, order or decree of a circuit court, the respondent may file seven copies of a response with the Clerk of the Supreme Court within thirty days after the filing of the petition for appeal in the office of the clerk of the circuit court. When the appeal is from another tribunal, the respondent may file seven copies of a response with the Clerk of the Supreme Court within thirty days after the filing of the petition for appeal with the Clerk of the Supreme Court. (As amended by order entered November 29, 1989, effective January 1, 1990, by order entered

June 26, 1990, effective July 1, 1990, and by order entered December 13, 1990, effective March 1, 1991.)

Rule 4. Presentation of Petition. (a) *Filing with Clerk.* When the appeal is from an order of the circuit court, eight copies of the petition for appeal shall be filed in the office of the clerk of the circuit court where the judgment, decree or order being appealed was entered. The circuit clerk shall note on each copy the date on which the petition for appeal was filed. There shall be attached to the original petition a memorandum of all parties who have appeared in the action from which the appeal is sought, together with the names and addresses of their counsel of record, if any.

(b) *Transmission to the Supreme Court.* The circuit clerk shall retain one copy of the petition and, within twenty days from deposit of money or bond for costs under subparagraph (d), shall transmit seven copies of the petition, along with the trial court record as designated in paragraph (c), to the Clerk of the Supreme Court by United States certified mail.

(c) *Record on Petition.* The appellant shall designate by itemization to the clerk of the circuit court such pleadings, orders and exhibits to enable the Supreme Court to decide the matters arising in the petition:

(i) In lieu of filing all or part of the transcript of testimony the petitioner may file under Rule 4A, in which event he may rely on the facts stated in his petition, or

(ii) If the petitioner desires he may cause to be prepared, pursuant to the provisions of Rule 80 of the West Virginia Rules of Civil Procedure, a transcript of such part of the proceedings not already on file as he deems necessary for inclusion in the record.

The circuit clerk, before transmitting the record to the Supreme Court, shall arrange the papers, as nearly as possible, in chronological order of filing, shall number the pages, shall make and certify copies of all orders entered in the case which are not in the files, and shall prepare a table of contents or index.

(d) *Bond for Costs.* Before such petition and record are transmitted, the petitioner shall deposit with the clerk of the circuit court sufficient money, or a bond conditioned to pay the same, in a penalty and with sureties to be fixed and approved by such clerk, to pay: (1) the expenses of preparing and indexing the record; (2) fees for filing the petition and certifying necessary copies of orders; (3) costs of transmission and return of the record; and (4) costs of the making of the transcript. The clerk shall endorse on the petition that such deposit has been made or such bond fixed. (As amended by order entered November 29, 1989, effective January 1, 1990.)

Rule 4A. Presentation of Petition Without Transcript of Testimony. (a) *Purpose.* In order to provide an inexpensive and expeditious method of appeal, a petitioner may file his petition without the transcript of testimony taken in the lower court.

(b) *Filing with Circuit Court.* Eight copies of the petition shall be filed in the office of the clerk of the circuit where the judgment or order being appealed was entered within sixty days from the date of entry of the judgment of order. Two additional copies of the petition shall be served upon each party to the action being appealed, as provided in Rule 15, and such parties shall have thirty days to file a reply petition with the clerk of the circuit court. The respondent shall not be entitled to an oral argument under rule 5.

(c) *Record on Petition.* The petitioner shall designate by itemization to the clerk of the circuit court so much of the pleadings, orders and exhibits in the case as will enable the Supreme Court to decide the matters arising in the petition. In lieu of filing all or part of the transcript of testimony, the petitioner shall set out in the petition a statement of all facts pertinent to the issues he raises. The petition shall include a certificate by the petitioner's attorney that the facts alleged are faithfully represented and that they are accurately presented to the best of his ability. The use of the abbreviated procedure, set forth in this Rule 4A, places the highest possible fiduciary duty upon a lawyer with regard to the court and intentional misrepresentation of any sort is grounds for disciplinary action.

(d) *Transmission to the Supreme Court.* The circuit clerk shall retain in his office one copy of the petition. He shall, at the end of thirty days from the date the petition was filed under paragraph (b), supra, or after respondent has filed a reply petition, whichever occurs first, transmit by certified mail to the Clerk of the Supreme Court seven

copies of the petition. The circuit clerk, before transmitting the record to the Supreme Court, shall arrange the papers, as nearly as possible, in chronological order of filing, shall number the pages, shall make and certify copies of all orders entered in the case which are not in the files, and shall prepare a table of contents or index.

(e) *Bond for Costs.* Before such petition and record are transmitted to the Supreme Court, the petitioner shall deposit with the clerk of the circuit court sufficient money, or a bond conditioned to pay the same, in a penalty and with sureties to be fixed and approved by such clerk, to pay: (1) the expenses of preparing and indexing the record; (2) fees for filing the petition and certifying necessary copies of orders; (3) costs of transmission and return of the record. The clerk shall endorse on the petition that such deposit has been made or such bond filed.

Rule 5. Hearing on Petition. (a) *Time for Hearing.* Within thirty days from the date of receipt of the petition and record by the Clerk of the Supreme Court, counsel may request oral presentation on the petition on any regularly scheduled motion day thereafter. Such request shall be made to the Clerk of the Supreme Court in writing or by telephone. Oral presentation will be heard in the order in which such requests were made. Oral presentation will not be heard, except upon motion for good cause shown, prior to expiration of the period allowed for filing a response as provided in Rule 3(f).

(b) *Oral Presentation.* Oral presentation shall be limited to ten minutes, unless additional time is granted by the Court.

(c) *Waiver of Oral Presentation.* At any time after the transmission of the petition and record to the Clerk of the Supreme Court in accordance with Rule 4A(d), counsel may inform the Clerk in writing that an oral presentation is not desired, in which case the petition will be considered by the Court in chambers. (As amended by order entered December 13, 1990, effective March 1, 1991.)

* * *

Rule 7. Rejection or Allowance of Appeal. (a) *Rejection.* If the petition for appeal is rejected by the Supreme Court on the ground that the judgment or order is plainly right, no other petition for appeal from that judgment or order shall be permitted. If the petition for appeal is rejected on any other ground, or if no ground be cited in the rejection, the petitioner may renew the petition as many times as he desires during the period prescribed by law for presentation of petitions.

(b) *Renewal of Petition.* A petitioner desiring to renew a petition may notify the Clerk of the Supreme Court of his intention in writing within thirty days after the entry of the order denying his application. In such case, the Clerk shall retain the petition and record in the Supreme Court, the petition may be reheard in accordance with Rule 5, and an amended petition or supplemental argument may be filed.

If the Clerk of the Supreme Court receives no timely notice of the petitioner's intention to renew, he shall return the record to the circuit clerk, who shall repay the petitioner any money deposited under Rule 4(d) or Rule 4A(e), in excess of fees and expenses.

(c) *Allowance.* If the petition for appeal is granted:

(1) The Clerk of the Supreme Court shall docket the same and immediately send a copy of the order granting the appeal to the petitioner's counsel, or, if there is no counsel of record, to the petitioner, and to the clerk of the circuit court, who shall retain the same in his records.

(2) The Clerk of the Supreme Court shall forthwith return the record to the clerk of the circuit court for preparation of the record of the case for appeal in accordance with Rules 8 and 9.

(3) The Clerk of the Supreme Court shall then issue summons against all parties appearing of record, other than the petitioner, that they may be heard, and shall also issue any supersedeas which may have been awarded. The Clerk of the Supreme Court shall serve the summons upon the parties by mailing the same to the counsel of record for each party, or if there is no counsel of record, to the party at his last known address. Service shall be complete upon mailing. The Clerk of the Supreme Court shall note upon the docket the names of the parties to whom the summonses were mailed, with the date of mailing.

(4) The Court may grant a supersedeas or modify the conditions thereof, in accordance with rule 6.

IN THE CIRCUIT COURT OF
MONONGALIA COUNTY, WEST VIRGINIA

LEONARD ADAMS, GARLEN BURTON, GEORGE & BARBARA CAMPBELL, LESLIE CARR, JOHN & CAROLYN CHAPMAN, ARVILLE DALTON, JAMES DARRAH, PAUL & BONNIE DUNN, TERRY ENGLAND, WILLIAM GABBERT, GEORGE HOSCHAR, EVERETT JOHNSON, JAMES & LOIS KIRK, WILLIAM KITTLE, FOSTER LIPSCOMB, NELSON LOTT, G.V. MEHALIC, JERYL ROOT, STANLEY ROWE, JOSEPH SBERNA, AND JOSEPH SHILOT,

Plaintiffs

v.

KEENE CORPORATION and OWENS-CORNING FIBERGLAS CORPORATION,

Defendants

CIVIL ACTION NOS. 86-C- 763, 764, 783, 830, 831, 832 & 87-C-7

ASBESTOS CASES

DEFENDANT OWENS-CORNING FIBERGLAS CORPORATION'S OBJECTIONS AND EXCEPTIONS TO JUDGE'S CHARGE TO JURY

Filed On Behalf of:
Owens-Corning Fiberglas Corporation, Defendant

Counsel of Record
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Firm No. 854

DEFENDANT OWENS-CORNING FIBERGLAS CORPORATION'S OBJECTIONS AND EXCEPTIONS TO JUDGE'S CHARGE TO JURY

AND NOW comes Defendant, Owens-Corning Fiberglas Corporation, by its attorneys Riley & DeFalice, P.C. and files its Objections and Exceptions to Judge's Charge to Jury, as follows:

1. The Honorable Court failed to charge that it was a jury question as to whether a Defendant's efforts to warn of a product's alleged danger were adequate.

2. The Honorable Court failed to charge that Plaintiffs' damages could be reduced or eliminated as a result of their alleged injuries being caused in whole or in part by smoking or causes other than asbestos related injuries.

3. The Court incorrectly charged that the issue of product defect was decided as a matter of law against this Defendant (Jury Charge; page 9, line 19 to page 10, line 1).

4. The Court incorrectly charged that the Plaintiffs could not be charged with contributory negligence or comparative fault (Jury Charge; page 10, line 1 to line 6)

5. The Court incorrectly charged that *all* acts of negligence, acts which were willful and wanton or omissions to act done by officers, agents or employees of a corporation were deemed to be the acts of the corporation (Jury Charge; page 15, line 19 to page 16, line 1).

6. The Court's instruction concerning the acts or failures to act by corporate officers, agents or employees was unfairly prejudicial to this Defendant, since it combined principles of compensatory and punitive liability,

such that the jury was confused as to whether it could award punitive damages based on alleged conduct which was merely negligent in nature (Jury Charge; page 15, line 19 to page 16, line 1).

7. The Court erroneously instructed on the issue of punitive damages. (Jury Charge; page 13, line 7 to page 14, line 3)

DISCUSSION

I. FAILURE TO CHARGE ON ISSUE OF ADEQUACY OF WARNING

This Honorable Court failed to charge the jury concerning warnings issued by defendant Owens-Corning Fiberglas Corporation (hereinafter "OCF" or "Owens Corning"). The West Virginia Supreme Court of Appeals stated in the case of *Morningstar v. Black & Decker Mfg. Co.*, 162 W.Va. 857, 253 S.E.2d 666, 682-683 (1979), that "product unsafeness is to be tested by what the reasonably prudent manufacturer would accomplish in regard to the safety of the product having in mind the general state of the art of the manufacturing process, including design, labels, and warnings, as it relates to the economic costs, at the time the product was made." After quoting this language from *Morningstar,* the Court in *Ilosky v. Michelin Tire Corp;* 307 S.E.2d 603, 611 (W.Va. 1983), concluded that "the determination of whether a defendant's efforts to warn of a product's dangers are adequate is a jury question."

In addition, the placement of a warning on packages will impact the defendant's potential liability for punitive

damages. In *Ilosky*, the Supreme Court of Appeals ruled that the trial court had correctly struck the plaintiff's claim for punitive damages because the evidence had shown that Michelin took steps to warn the public concerning the hazard claimed. The warnings consisted of warnings and recommendations distributed to consumers and dealers. The Court reasoned that even though the warnings may have been inadequate to fully warn, the act itself indicates some effort by the manufacturer. Such an effort precluded a finding of willful, wanton or malicious conduct.

During the course of the trial, evidence was presented showing warnings by Owens-Corning. The Court's failure to instruct concerning warnings was therefore erroneous. Given the significance of this issue, the failure to instruct was not harmless error.

II. FAILURE TO CHARGE ON SMOKING OR OTHER CAUSES

During the course of the trial, evidence was presented showing the extensive smoking histories of most of the Plaintiffs. In addition, evidence was presented by medical experts concerning the nexus of smoking and lung disease. In addition, as to some Plaintiffs, medical evidence was presented concerning the presence of medical conditions which could adversely impact the Plaintiff's breathing. In spite of this evidence, the Court failed to instruct the jury that in making its determination, it could take into account these other factors.

Comparative fault or negligence is available as to a defense in a strict liability products liability action, so

long as the complained of conduct is not a failure to discover a defect or to guard against it. *Star Furniture Co. v. Pulaski Furniture Co.*, 297 S.E.2d 854, 863 (W.Va. 1982). The cited case also stands for the proposition that a plaintiff can recover in strict liability only for those injuries actually caused by the product defect (*Id.* 297 S.E.2d at 859)

Clearly, the Court's failure to instruct concerning smoking and/or other health problems was erroneous. Evidence supporting these defenses was introduced by the defendants and created a jury question. Even under strict liability, the product defect must be shown to be the proximate cause of the plaintiff's injuries. *Morningstar,* 253 S.E.2d at 680. Strict liability is not absolute liability. Therefore, the Court should have instructed concerning other possible causes for Plaintiffs' alleged injuries.

III. DIRECTED VERDICT ON PRODUCT DEFECT

The Court ruled as a matter of law that OCF's asbestos containing products were defective. In its instruction, the Court correctly stated that the question of product defect is usually one for the jury's determination. *See generally, Morningstar; Ilosky.*

The standard for directing a verdict on liability is found in Syllabus Points 4 and 5 of *Sommerville v. Pennsylvania Railroad Co.*, 151 W.Va. 709, 155 S.E.2d 865 (1967) wherein the Supreme Court of Appeals stated:

> "4. When the material facts are undisputed and reasonable men can draw only one conclusion from them, the question of negligence is a question of law for the Court.

> "5. Where the evidence given on behalf of the defendant is clearly insufficient to support a verdict for him so that such verdict, if returned by a jury, must be set aside, and the evidence of the plaintiff is clear and convincing, it is the duty of the trial court, when so requested, to direct a verdict for plaintiff."

This standard was recently approved and applied in the case of *King v. Kayak Manufacturing Corporation*, 387 S.E.2d 511 (W.Va. 1989). In *King*, a diver brought a product liability suit against a swimming pool manufacturer. Plaintiff became quadriplegic when he dove into one of Kayak's above-ground pools. The Supreme Court of Appeals identified the central issue of the case as being the trial court's finding that plaintiff as a matter of law was entitled to a directed verdict, in spite of contrary evidence of contributory negligence and assumption of the risk (*Id.* 387 S.E.2d at 520).

The Supreme Court of Appeals reversed the lower court's directed verdict, noting that several material factual disputes existed. Evidence adduced by defendant showed that in addition to knowing the depth of the pool, plaintiff had elected to dive into the pool with his arms at his side, rather than overhead. This would result in a deeper dive in the shallow water. The court determined that the jury could reasonably have concluded that Plaintiff had actual knowledge of the risk of serious injury.

The Court completed its analysis by quoting Syllabus Point 2 in the case of *Ventura v. Winegardner*, 357 S.E.2d 764, (W.Va. 1987), which stated:

> Where [in a trial by jury] there is competent evidence tending to support a pertinent theory in the case, it is the duty of the trial court to give an instruction presenting such theory when requested to do so. *McAlister v. Weirton Hospital Co.*, ___ W.Va. ___, 312 S.E.2d 738, 744 (1983) (citation omitted) [in original] Syl. pt. 2 *Brammmer* [sic] *v. Taylor*, ___ W.Va. ___, 338 S.E.2d 207 (1985).

The reasoning of the *King* case would appear to be applicable in the instant action. The Court here *sua sponte* directed a verdict on product defect following presentation of defendant's evidence. OCF had presented testimony showing state of the art consisting of the following witnesses: Robert Peele; W. Keith Morgan, M.D.; Samuel Schillaci; Jerry Helser; Edward Gensler, M.D.; Willis Hazard; and Gerrit Schepers, M.D. (cross examination).[1] In addition, on the issue of product defect, OCF's evidence included exhibits from Mr. Peele's testimony. Although OCF believes that this evidence was sufficient to support a verdict in its favor, at a minimum (arguendo) it was competent evidence sufficient to support a pertinent theory in the case. In order to sustain a request for a jury instruction concerning product defect, only the minimal showing of competent evidence was required. OCF clearly met that standard. OCF would also note for the Court that West Virginia juries have rendered verdicts

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[1] OCF believes that it is particularly significant that it developed significant evidence favorable to its position on product defect/state of the art through Plaintiffs' own state of the art witness, Dr. Schepers. The evidence developed in his cross-examination should, alone, have required submission of the product defect issue to the jury.

against Plaintiffs based on the same product defect evidence submitted by these Plaintiffs. It is apparent, based both on the case law and facts that the Court erred in instructing the Jury that product defect was determined as a matter of law against OCF.

IV. FAILURE TO INSTRUCT AS TO AVAILABILITY OF DEFENSES OF CONTRIBUTORY NEGLIGENCE OR COMPARATIVE FAULT

The Court instructed, as a matter of law, that the defenses of contributory negligence and comparative fault were not available to OCF. Based on *Star Furniture* and *King*, discussed previously, the law of West Virginia is clear that these defenses should be available to defendants involved in a strict liability, products liability case. Since OCF has discussed this issue previously in this document, rather than restating its arguments, it incorporates its previous discussion herein by reference.

V. ACTS OF CORPORATE OFFICERS, AGENTS AND EMPLOYEES

The Court instructed that all acts or failure to act by corporate officers, agents or employees (hereinafter "employees") are held by law to be the acts of the corporation. This statement is an incorrect summary of the law of West Virginia, in that it is overly broad. OCF asserts that West Virginia law holds that not all acts of employees may be imputed to the corporation.

For instance, the Supreme Court of Appeals has ruled that: a corporation is not ordinarily chargeable with the

information held by an officer which it was in his interest to conceal; *Lawhead v. Stewart*, 122 W.Va. 80, 7 S.E.2d 350, 351 (1940); a false statement of an agent of a corporation in making a contract does not bind the corporation, where the act is not within the scope of his authority; *McDonald v. Cole*, 46 W. Va. 186, 32 S.E. 1033, 1034 (1899); the act of officers and agents in making a dedication of property, without authority from the directors, will not make valid a dedication unless it is expressly or implicitly ratified by the corporation; *Hast v. Piedmont & C.R. Co.*, 52 W. Va. 396, 44 S.E. 155 (1903); notice to individual directors of matters not within the scope of their authority is not considered notice to the corporation; *Mack Realty Co. v. Beckley Hardware & Supply Co.*, 107 W.Va. 290, 148 S.E. 122, 123 (1929).

In West Virginia cases decided by the Fourth Circuit Court of Appeals, similar results have occurred. The court has decided that a corporation should not be required to pay punitive damages unless a showing is made of the agent's authority or ratification by the principal of the alleged wrongs. *Great Atlantic and Pacific Tea Co. v. Lethcoe*, 279 F.2d 948 (4th Cir. 1960). *See also England v. American Southern Insurance Company*, 380 F.2d 137 (4th Cir. 1967); *Ohio Farmers Indemnity Co v. Charleston Laundry Co.*, 183 F.2d 682 (4th Cir. 1956).

These cases consistently stand for the proposition that the Court's instruction in this case was overly broad. Certainly all acts of employees may not be imputed to the corporation pursuant to West Virginia law. Any act outside the scope of authority of the employee may not be imputed to the corporate principal. By framing the instruction so broadly, the Court unfairly prejudiced OCF.

VI. CONFUSING JURY CHARGE

The instruction discussed in the previous section is the source of a second objection by OCF. As phrased, the charge is confusing, in that it combines principles of both compensatory and punitive damages in one charge. By speaking of negligent, wanton, willful, and malicious corporate acts within the same sentence, OCF asserts that it was unfairly prejudiced. The phrasing of the instruction was such that the jury obviously believed that it could award punitive damages on the basis of negligent conduct only.

In West Virginia, where gross fraud, malice, oppression, or wanton, willful or ruthless conduct, or criminal indifference to civil obligations affecting the rights of others appears, the jury may assess punitive or vindictive damages, *Wells v. Smith*, 297 S.E.2d 872 (W.Va. 1982). *Cook v. Hecks Inc.*, 342 S.E.2d 453, 461 (W.Va. 1986). This standard is obviously much more strict than that which exists for a negligence finding. *See, Adair v. Huffman*, 156 W.Va. 592, 195 S.E.2d 739 (1973) *cert. denied* 348 U.S. 981 (1955), *rehrg. denied* 349 U.S. 924 (1955). Under the *Wells* standard, acts amounting to negligence will not support a finding of punitive damages. *See, Ilosky, supra.* However, by placing the negligence and punitive language sequentially in a single sentence, the jury here was misled into believing that mere negligent acts would support a punitive finding.

Under the law of West Virginia, the court should refuse to give an instruction which tends to be incomplete or misleading *Koontz v. Long*, 384 S.E.2d 837, 842 (W.Va.

1989). Such an instruction is erroneous *Catlett v. MacQueen*, 375 S.E.2d 184 (W.Va. 1988). *Cross v. Trapp*, 294 S.E.2d 446 (W.Va. 1982). In addition, where an instruction is susceptible to two constructions, one of which is erroneous, and which may, therefore, mislead the jury, it should not be given. *McGlone v. Superior Trucking Co. Inc.*, 363 S.E.2d 736, 745 (W.Va. 1987). *See also Gilliam v. Yeates*, 329 S.E.2d 51, 52 (W.Va. 1985).

In the *Koontz* case, the Supreme Court of Appeals was faced with a jury instruction in a case involving ownership of funds in a decedent's certificates of deposit. The issues were whether the evidence was sufficient to support the conclusion that a fiduciary relationship existed between a niece and one holder and whether the holders intended to make a bona fide gift of the funds to the niece. In rejecting the proposed instruction of appellant, the Court stated:

> As already discussed, under the law of West Virginia, fraud, mistake, or certain other inequitable circumstances, including the mere existence of a fiduciary relationship between the joint parties on an account, may overcome the presumption of a gift in the registration of the account. The existence of a fiduciary relationship is not necessarily a circumstance equal to or in the nature of fraud or mistake. In that the appeallant's [sic] Instruction No. 8 failed to include the existence of a fiduciary relationship as a specific ground which might obviate the presumption of a gift, and in that it suggested that before such a relationship could be considered as a factor obviating the presumption of gift it had to rise to the level of ordinary fraud or mistake, as opposed to constructive fraud,

> this Court believes that his instruction tended to be an incomplete and misleading statement of the law. Such an instruction may properly be refused by a trial court. (Citations omitted) (384 S.E.2d at 842.)

Owens-Corning believes that the present circumstances are similar to those found in *Koontz*. The misleading aspect in both cases involves the degree of conduct necessary to meet a legal standard. In both cases, the jury confusion occurs as a result of the jury's application of the wrong legal standard to the facts. Since it is likely that this jury was misled into believing that it could award punitive damages based on merely negligent conduct, the instruction was erroneous.

VII. IMPROPER INSTRUCTION ON PUNITIVE DAMAGES

Owens-Corning asserts that the jury should not have been instructed concerning punitive damages, based upon the evidence submitted to the jury.

Punitive damages are permitted as a means of punishing a defendant for egregious conduct *Wells v. Smith, supra*. The type of conduct which will support an award of punitive damages has been set forth in the previous section.

The evidence presented to the jury clearly proved that in December, 1966, OCF placed warning labels on the asbestos-containing product identified during the course of the trial. Having proved that it warned, OCF should not be liable for punitive damages, based on the Supreme Court of Appeals' decision in the *Ilosky* case.

After setting forth the principle that punitive damages are awardable to punish for willful, wanton and other aggravated conduct, the *Ilosky* court went on to sustain the trial court's decision to strike the plaintiff's punitive damage claim, stating:

> The trial court correctly struck the appellee's claim for punitive damages. The evidence showed that Michelin had taken steps to warn the public about mixing radial and conventional tires. These efforts included placing warnings and recommendations against such action in literature distributed to consumers and to individual dealers who carried Michelin brand tires. The fact that these warnings may have been inadequate to fully warn of the hazards of such use does not obviate the fact that Michelin made some effort. This case does not involve a situation where the manufacturer or distributor made no effort to warn about use of the product. Therefore, the facts do not meet the willfulness, wantonness, or malice standard. (307 S.E.2d at 619.)

The dictates of *Ilosky* clearly show that it was improper for the Court to instruct that punitive damages were awardable against OCF. The evidence proved that OCF warned. Under *Ilosky*, it is not relevant whether the warning was adequate, for purposes of removing the alleged product defect arising from a lack or warning. The act itself was sufficient evidence that OCF's conduct did not rise to the level of aggravation necessary to support such damages. It is apparent that the giving of

any instruction that punitive damages could be awarded, was clear error based on these facts.[2]

CONCLUSION

An erroneous instruction is presumed to be prejudical [sic], unless it appears that the complaining party was not injured by the giving of the instruction. Instructions must be based on the evidence. The giving of an erroneous instruction will warrant the award of a new trial. *Cato v. Silling*, 137 W.Va. 694, 73 S.E.2d 731 (1952). OCF asserts that the instructions noted (or the failure to give instructions) was erroneous and prejudical [sic] to OCF for the reasons stated herein.

RILEY & DEFALICE, P.C.

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By: /s/ Thomas J. Michael/by FEO
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By: /s/ Fredric E. Orlansky
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[2] OCF incorporates herein by reference the Objections and Exceptions to the Jury Charge filed by other similarly situated parties, to the extent they are not inconsistent herewith.

No. 92-844

Supreme Court, U.S.
FILED
DEC 17 1992
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1992

OWENS-CORNING FIBERGLAS CORPORATION,
Petitioner,

-v-

LEONARD ADAMS, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

RESPONSE IN OPPOSITION TO MOTION TO DELAY DETERMINATION OF PETITION FOR WRIT OF CERTIORARI PENDING DISPOSITION OF TXO PRODUCTION CORPORATION V. ALLIANCE RESOURCES CORPORATION

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RESPONSE IN OPPOSITION TO MOTION TO DELAY DETERMINATION OF PETITION FOR WRIT OF CERTIORARI PENDING DISPOSITION OF TXO PRODUCTION CORPORATION V. ALLIANCE RESOURCES CORPORATION

AND NOW, come Respondents, by their attorneys, Tybe A. Brett, Esquire and Henderson & Goldberg, P.C. and Segal & Davis, and file its Response in Opposition to Motion to Delay Determination of Petition for Writ of Certiorari Pending Disposition of TXO Production Corporation v. Alliance Resources Corporation as follows:

1. Petitioner Owens-Corning Fiberglas Corporation (OCF) filed a Petition for a Writ of Certiorari, to which Respondents filed a Response on November 20, 1992.

2. Previously, this Court had denied a Petition for a Writ of Certiorari, raising the same issues as those raised in OCF's Petition by another defendant in the same trials as those involved in the instant Petition. Keene Corporation v. Adams, 61 U.S.L.W. 3352 (U.S. Nov. 9, 1992) (No. 92-359).

3. If this Court's decision to grant certiorari in TXO Production Corporation v. Alliance Resources Corporation, 61 U.S.L.W. 3392 (U.S. Nov. 30, 1992) (No. 92-479), had any significance for the instant Petition, then Petitioner should have addressed that significance in a Reply Brief or Supplemental Brief, which it could have timely filed under Supreme Court Rules 15.6 or 15.7.

4. Further, the Clerk should have refused OCF's Petition for a Writ of Certiorari under Supreme Court Rule 13.3. As stated in the Response to Petition for a Writ of Certiorari at 6 n.2, the West Virginia Supreme Court refused OCF's petition for appeal on

February 5, 1992. OCF then filed a notice of renewal of its petition for appeal, but under the pertinent West Virginia Rule of Appellate Procedure, such a notice must be filed within the period of time for filing the original petition, but in the instant case, that period had expired on November 1, 1991.

5. Pursuant to Supreme Court Rule 13.1, OCF's Petition for a Writ of Certiorari should have been filed within 90 days after entry of the order denying review by the West Virginia Supreme Court, or on May 5, 1992. OCF did not file its Petition for a Writ of Certiorari by this date, nor did it timely request an extension of time within which to file its Petition.

6. In addition, the issues in the TXO case are completely distinguishable from those in the instant Petition. For example, in TXO, the ratio of punitives to compensatories was over 500:1, while in the instant petition, the ratio of punitives to compensatories was only 2.4:1. Moreover, unlike the TXO case, in which a major issue is whether the punitive damages are excessive, OCF's Petition does not challenge the sufficiency of the evidence of punitive damages but rather asserts that multiple punitive damage awards are unconstitutional solely by virtue of their repetitiveness.

7. OCF did not preserve or raise the issues raised in the TXO Petition.

8. For the reasons stated in the Response, this Court should deny OCF's Petition for a Writ of Certiorari, and there is no reason to delay its decision on the Petition.

WHEREFORE, Respondents respectfully request that this Court deny OCF's Petition for a Writ of Certiorari.

Respectfully submitted,

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Dated: December 17, 1992